

The Gazette of India



PUBLISHED BY AUTHORITY

No. 21] NEW DELHI, SATURDAY, AUGUST 25, 1951

PART II—Section 2

Bills and Reports of Select Committees on Bills

PARLIAMENT OF INDIA

The following Report of the Select Committee on the Bill to provide for the establishment of State Financial Corporations, was presented to Parliament on the 10th August, 1951:—

We, the undersigned, members of the Select Committee to which the Bill to provide for the establishment of State Financial Corporations was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

Upon the changes proposed by us, which are not formal or consequential, we note as follows:—

Clause 1.—In sub-clause (1), we have substituted the figures “1951” for the figures “1950”.

Clause 2.—

Clause 2(c).—We think that the word “production” occurring in the definition might include agricultural production also. As it is not the intention to bring agricultural production within the purview of this Bill, we have omitted the word “production”.

We are of opinion that the definition should be expanded to cover concerns engaged in mining or in the generation or distribution of electricity or any other form of power and we have amended the definition accordingly.

We think that the expressions “scheduled bank” and “underwriting” should also be defined and we have added two new parts (f) and (g) to this clause.

Clause 4—

Clause 4(1).—We are of opinion that the maximum limit of the authorised capital should be raised from two crores to five crores and sub-clause (1) has accordingly been amended.

Clause 4(2).—We are of opinion that the shares should have the same face value and this clause has accordingly been amended.

Clause 1(3).—We consider that the initiative of distributing shares among various groups of subscribers should be with the State Government and not with the Central Government. We have amended this clause accordingly. We have also made some drafting changes in this clause.

Clause 4(4).—This sub-clause has been omitted as being redundant.

Clauses 4(5) and 4(6).—We have made some drafting changes in these sub-clauses to make the intention clear.

Clause 6.—We have inserted a new sub-clause (2) to this clause to provide that the shares of the Corporation should be trustee and approved securities.

Clause 9.—We have made some small drafting changes in this clause.

Clause 10.—We are of opinion that there should be a separate director to represent co-operative banks. We have therefore increased the number of directors to be elected under part (d) of this clause from two to three and made consequential changes.

Clause 11.—We consider that the term of office of an elected director should be four years instead of three years. We have accordingly amended clause 11(2) and modified the proviso thereto.

Clause 13.—We have made some minor drafting changes in this clause and have omitted part (b) as being redundant.

Clause 15.—We consider that the term of office of a Chairman should be two years and not one year and clause 15(2) has accordingly been amended.

Clause 17.—The salary and allowances of the first managing director cannot be determined by the Board. We have accordingly inserted a proviso to the effect that the State Government shall fix the salary and allowances and the term of office of the first managing director.

Clause 18.—We have omitted the words "for which he is nominated or elected" from clause 18(2) as being redundant.

Clause 21.—We have amended this clause by inserting the words "or industries" at the end.

Clause 25.—We consider that the period of twenty-five years for repayment of loan raised by industrial concerns provided in this clause should be reduced to twenty years. We have accordingly amended parts (a) and (e) of sub-clause (1).

Clause 28.—We consider that the Financial Corporation should not grant any loan or advance on the security of its own shares and we have accordingly added a new part (c).

Clause 29.—We have made some drafting changes in this clause to make the intention clear.

Clause 30.—In clause 30(f), we have omitted the words "in the opinion of the Board" in order that when action is taken under this clause the aggrieved party may agitate the question before a court of law.

Clause 31.—We are of opinion that the rights which accrue to the Financial Corporation under clause 29 or clause 30 should be enforced through the intervention of a court. We have accordingly amended this clause to make it clear that the Financial Corporation shall have to apply to a district judge to enforce its claim.

Clause 32.—We consider that in a presidency town the functions of a district judge should not be exercised by the chief judge of the small cause court. We

have accordingly provided that such functions should be exercised by the principal judge of a city civil court; but if there is no such city civil court, the functions of a district judge should be exercised by the High Court.

Clause 37.—We consider that while it may not be necessary for the Comptroller and Auditor-General of India to accept the entire responsibility for the audit of the Financial Corporations, he should have some control over the audit of such Corporations. We have accordingly amended clauses 37(1) and 37(4) and inserted 3 new sub-clauses (5), (6) and (7). We have also made some small drafting changes in clause 37(3).

Clause 38.—We consider that a Financial Corporation should be allowed three months' time instead of two months to submit its statements and accounts. We have accordingly amended clause 38(3). We have also provided that the statement of the assets and liabilities of the Financial Corporation, its profit and loss account and the reports including auditors' report should also be laid before the State Legislature.

Clauses 40 and 41.—We have substituted the words "other employee" for the word "servant" occurring in this clause.

Clause 47.—We consider that it should be specifically laid down that the rules should provide for the limitation of the voting rights of a shareholder and the manner in which such voting rights may be exercised. We have amended clause 47 accordingly.

2. The Bill was published in Part II—section 2 of the *Gazette of India*, dated the 21st December, 1950.

3. We think that the Bill has not been so altered as to require circulation under Rule 77(4) of the Rules of Procedure and Conduct of Business, and we recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR

B. R. AMBEDKAR

C. D. DESHMUKH

MAHAVIR TYAGI

V. B. VAIDYA

SATIS CHANDRA SAMANTA

BIKRAM LAL SONDHI

K. A. DAMODARA MENON

H. S. RUDRAPPA

RAM CHANDRA UPADHYAYA

T. R. DEOGIRIKAR

R. VENKATARAMAN

SYAMNANDAN SAHAYA

GOKUL LAL ASAWA

T. A. RAMALINGAM CHETTIAR

AWADHESH PRATAP SINGH

RADHELAL VYAS

L. S. YADAV

KRISHNA CHANDRA SHARMA

(AS AMENDED BY THE SELECT COMMITTEE)

(*Words sidelined or underlined indicate the amendments suggested by the Committee; asterisks indicate the omissions*)

BILL NO. 102 OF 1950

A Bill to provide for the establishment of State Financial Corporations.

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the State Financial Corporations Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in any State on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “Board” means the Board of directors of the Financial Corporation;

(b) “Financial Corporation” means the Financial Corporation established for the State under section 3;

(c) “industrial concern” means any concern engaged in the manufacture, preservation or processing of goods or in mining or in the generation or distribution of electricity or any other form of power;

(d) “prescribed” means prescribed by rules or regulations made under this Act;

(e) “Reserve Bank” means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (II of 1934);

(f) “scheduled bank” means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (II of 1934);

(g) “underwriting” means contract, with or without conditions, to subscribe for stocks, shares, bonds or debentures of an industrial concern with a view to the resale of the whole or any part thereof.

CHAPTER II

INCORPORATION OF STATE FINANCIAL CORPORATIONS, THEIR CAPITAL AND MANAGEMENT

3. Establishment of State Financial Corporations.—(1) The State Government may, by notification in the Official Gazette, establish a Financial Corporation for the State under such name as may be specified in the notification.

(2) The Financial Corporation shall be a body corporate by the name notified under sub section (1), having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire and to hold property and shall by the said name sue and be sued.

4. Share capital and shareholders.—(1) The authorised capital of the Financial Corporation shall be such sum as may be fixed by the State Government in this behalf, but it shall in no case be less than fifty lakhs of rupees or exceed five crores of rupees.

(2) The authorised capital shall be divided into such number of fully paid-up shares as the State Government may determine and shall be issued to the parties mentioned in sub-section (3) at such times and in such manner as that Government, may determine and each such share shall have the same face value.

(3) The State Government shall, with the approval of the Central Government, determine the number of shares which may, respectively, be distributed among—

(a) the State Government,

(b) the Reserve Bank,

(c) scheduled banks, insurance companies, investment trusts, co-operative banks or other financial institutions, and

(d) parties other than those referred to in clauses (a), (b) and (c):

* * *

Provided that the number of shares * which may be allocated to the parties referred to in clause (d) shall in no case exceed twenty-five per cent. of the total number of shares.

* . * * *

(4) Subject to the other provisions contained in this section, the allocation of shares among the parties referred to in clauses (c) and (d) of sub-section (3) and the allotment of such shares shall be made by the Financial Corporation in such manner as may be prescribed.

(5) If any shares allocated to any of the parties referred to in clauses (c) and (d) of sub-section (3) remain unsubscribed, they shall be subscribed for by the State Government, but the State Government may at any time thereafter dispose of the shares so subscribed for to any party who was eligible to subscribe for it in the first instance.

5. Restrictions on transfer of shares.—(1) The shares of the Financial Corporation shall not be transferable except to the State Government, the Reserve Bank or any other financial institution recognised in this behalf by the State Government.

Provided that the shares subscribed for by members of the public shall be freely transferable.

(2) Nothing contained in this section shall affect the provisions of sub-section (5) of section 4.

6. Shares to be guaranteed by the Central Government and to be trust or approved securities.—(1) The shares of the Financial Corporation shall be guaranteed by the State Government as to the repayment of principal and the payment of annual dividend at such minimum rate as the State Government may, with the approval of the Central Government, fix by notification published in the Official Gazette at the time of issuing the shares.

(2) Notwithstanding anything contained in the Acts hereinafter mentioned in this sub-section, the shares of the Corporation shall be deemed to be included among the securities enumerated in section 20 of the Indian Trusts Act, 1882 (II of 1882) and also to be approved securities for the purposes of the Insurance Act, 1938 (IV of 1938) and the Banking Companies Act, 1949 (X of 1949).

7. Additional capital of the Financial Corporation.—(1) The Financial Corporation may, in consultation with the Reserve Bank, issue and sell bonds and debentures carrying interest for the purpose of increasing its working capital:

Provided that the total amount of bonds and debentures issued and outstanding and of the contingent liabilities of the Financial Corporation in the form of guarantees given by it or underwriting agreements entered into by it shall not at any time exceed five times the amount of the paid-up share capital and the reserve fund of the Financial Corporation.

(2) Bonds and debentures of the Financial Corporation shall be guaranteed by the State Government as to the repayment of the principal and the payment of interest at such rate as the State Government may on the recommendation of the Board and with the approval of the Central Government, fix at the time the bonds and debentures are issued.

8. Deposits with the Financial Corporation.—The Financial Corporation may accept deposits from the public repayable after the expiry of a period which shall not be less than five years from the date of the making of the deposit, and on such other terms as it thinks fit:

Provided that the total amount of such deposits shall not at any time exceed the paid-up capital of the Financial Corporation.

9. Management of Financial Corporations.—The general superintendence, direction and management of the affairs and business of the Financial Corporation shall vest in a Board of directors which, with the assistance of an Executive Committee and a managing director may exercise all the powers and discharge all the functions which may be exercised or discharged by the Financial Corporation.

10. Board of directors.—The Board of directors shall consist of the following, namely:—

- (a) three directors nominated by the State Government;
- (b) one director nominated by the Central Board of the Reserve Bank;
- (c) one director nominated by the Board of Directors of the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948 (XV of 1948);
- (d) three directors elected in the prescribed manner from among themselves by the parties referred to in clause (c) of sub-section (3) of section 4, one of whom shall be elected to represent scheduled banks, another to represent Co-operative banks and the third to represent the remaining financial institutions;
- (e) one director elected in the prescribed manner from among themselves by the parties referred to in clause (d) of sub-section (3) of section 4 who are shareholders of the Financial Corporation;
- (f) one managing director appointed by the State Government, in consultation with the Board except in the case of the first appointment:

Provided that on the first constitution of the Board the directors referred to in clauses (d) and (e) shall be nominated by the State Government and the directors so nominated shall, for the purposes of this Act, be deemed to be elected directors:

Provided further that all directors of the Board first constituted other than the managing director shall retire at the end of the first year.

11. Term of office and retirement of directors.—(1) A nominated director shall hold office during the pleasure of the authority nominating him.

(2) An elected director other than a director deemed to be elected under the first proviso to section 10 shall hold office for four years:

Provided that two out of the four directors so elected shall retire at the end of two years after the first election and the other two at the end of four years after such election, the directors so to retire being determined by lot.

(3) Notwithstanding anything contained in sub-section (2), an elected director shall continue in office until his successor is elected and shall also be eligible for re-election for not more than two full consecutive terms after the rotation of elected directors has begun.

12. Disqualifications for being a director.—No person shall be a director who—

- (a) except in the case of a managing director, is a salaried official of the Financial Corporation; or
- (b) is or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors; or
- (c) is found to be a lunatic or becomes of unsound mind; or
- (d) is or has been convicted of any offence involving moral turpitude.

13. Removal of director from office.—The State Government may remove from office * * any * director who—

- (a) is, or has become, subject to any of the disqualifications mentioned in section 12; or

* * *

- (b) without excuse sufficient in the opinion of the State Government to exonerate it, is absent without leave of the Board from more than three consecutive meetings of the Board.

14. Resignation of office by director and filling up of casual vacancies.—

(1) The managing director or any other director may resign his office by giving notice thereof in writing to the State Government, and, on such resignation being accepted, shall be deemed to have vacated his office.

(2) A casual vacancy in the office of an elected director shall be filled by election and a director so elected shall hold office for the unexpired portion of the term of his predecessor.

(3) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

15. Chairman of the Board.—(1) The Chairman of the Board shall be one of the directors, not being the managing director, nominated by the State Government, after considering, except in the case of the nomination of the first Chairman, the recommendation of the Board:

Provided that the nomination of the chairman for any period other than the first period shall be made only after the vacancies in the office of directors occurring by efflux of time in that period have been filled by nomination or election as the case may be.

(2) The Chairman shall hold office for two years or until his successor is nominated:

Provided that a Chairman shall so long as he remains a director be eligible for re-nomination as Chairman.

16 Remuneration of directors.—The directors other than the managing director and not being servants of the State Government shall be paid such fees for attending meetings of the Board and, if they are members thereof, of the Executive Committee, as may be prescribed.

17. Managing director.—The managing director shall—

- (a) be a whole time officer of the Financial Corporation;
- (b) perform such duties as the Board may, by regulations, entrust or delegate to him,
- (c) hold office for four years and be eligible for reappointment;
- (d) receive such salary and allowances as the Board, with the previous approval of the State Government, may determine:

Provided that the first managing director shall hold office for such term and shall receive such salary and allowances as the State Government may fix.

18. Executive Committee.—(1) The Executive Committee shall consist of the managing director who shall be the Chairman of the Committee, and three other directors, chosen as follows:—

(a) two directors elected by the nominated directors, one from among the directors nominated by the State Government, and one from among the directors nominated by the Reserve Bank and the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948 (XV of 1948);

(b) one director elected by the elected directors.

(2) A director elected to be a member of the Executive Committee shall hold office as such for the rest of his term of office as director, * *

* *

19. Meetings of the Board and Committee.—(1) The Board and the Executive Committee shall meet at such times and places and shall observe such rules of procedure in regard to transaction of business at its meetings as may be provided by regulations made under this Act.

(2) All questions at a meeting shall be decided by a majority of votes of the members present, and, in the case of equality of votes, the Chairman or in his absence, any other person presiding, shall have a second or casting vote.

(3) No director shall vote on any matter in which he is interested.

(4) If for any reason the Chairman is unable to be present at a meeting—

(a) of the Board, a director other than the managing director, authorised by the Chairman in writing in this behalf, shall preside at that meeting, or

(b) of the Executive Committee, a member authorised in writing by the managing director shall preside at that meeting.

20. Powers of Executive Committee.—(1) Subject to such general or special directions as the Board may from time to time give, the Executive Committee may deal with any matter within the competence of the Board.

(2) The minutes of every meeting of the Executive Committee shall be laid before the Board at the next following meeting of the Board.

21. Advisory Committee.—The Financial Corporation may appoint one or more advisory committee or committees for the purpose of assisting the Financial Corporation in the efficient discharge of its functions and, in particular, for the purpose of securing that those functions are exercised with due regard to the circumstances and conditions prevailing in, and the requirements of, particular areas or industries.**22. Offices and agencies.**—The Financial Corporation shall establish its head office at such place in the State as the State Government may specify and may, with the previous sanction of the State Government, establish offices or agencies in any other place in the State.

23. Officers and other employees of the Corporation.—The Financial Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and the remuneration payable to them

CHAPTER III

POWERS AND DUTIES OF THE BOARD

24. General duty of the Board.—The Board in discharging its functions under this Act shall act on business principles, due regard being had by it to the interests of industry, commerce and the general public.

25. Business which Financial Corporations may transact.—(1) The Financial Corporation may, subject to the provisions of this Act, carry on and transact any of the following kinds of business, namely:—

(a) the guaranteeing on such terms and conditions as may be agreed upon of loans raised by industrial concerns which are repayable within a period not exceeding twenty years and are floated in the public market;

(b) the underwriting of the issue of stocks, shares, bonds, or debentures by industrial concerns;

(c) the receipt in consideration of the services mentioned in clauses (a) and (b) of such commission as may be agreed upon;

(d) the retention as part of its assets of any stocks, shares, bonds, or debentures which it may have to take up in fulfilment of its underwriting liabilities: provided that it disposes of the stocks, shares, bonds or debentures so acquired as early as practicable and in any case within a period of seven years from the date of such acquisition;

(e) the granting of loans or advances to, or the subscribing to debentures of, industrial concerns, repayable within a period not exceeding twenty years from the date on which they are granted or subscribed to, as the case may be; and

(f) generally, the doing of all such acts and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.

(2) No accommodation shall be given under clauses (a) and (e) of sub-section (1), unless it is sufficiently secured by a pledge, mortgage, hypothecation or assignment of Government or other securities, stocks, shares or secured debentures, bullion, movable or immovable property or other tangible assets in the manner prescribed by regulations.

26. Limit of accommodation.—The Financial Corporation shall not enter into any arrangement under clauses (a) and (e) of sub-section (1) of section 25 with a single industrial concern for an amount equivalent in the aggregate to more than ten per cent. of the paid-up share capital of the Corporation, but in no case exceeding ten lakhs of rupees.

27. Power to impose conditions for accommodation.—(1) In entering into any arrangement under section 25 with an industrial concern, the Financial Corporation may impose such conditions as it may think necessary or expedient for protecting the interests of the Financial Corporation and securing that the accommodation granted by it is put to the best use by the industrial concern.

(2) Where one of the conditions imposed under sub-section (1) is that a director shall be appointed by the Financial Corporation on the board of directors of the industrial concern to protect the interests of the Financial Corporation,

such condition shall be a valid condition notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913), or in any other law for the time being in force or in any instrument relating to the industrial concern.

28. Prohibited business.—The Financial Corporation shall not—

(a) accept deposits, except as provided by this Act;

(b) subscribe directly to the shares or stock of any company having a limited liability;

Provided that nothing in clause (b) shall affect the right of the Financial Corporation to acquire any shares, bonds or debentures of a company having limited liability in fulfilment of any underwriting agreement entered into by the Financial Corporation;

(c) grant any loan or advance on the security of its own shares.

29. Rights of Financial Corporation in case of default.—(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management of the industrial concern, as well as the right to sell and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers of sale and realisation under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the sale had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any property is sold or realised by the Financial Corporation under the provisions of this section, the money which is received by it from such sale or realisation shall, in the absence of any contract to the contrary, be held by the Financial Corporation in trust to be applied, first, in payment of all costs, charges and expenses properly incurred by it as incident to the said sale or realisation and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation takes over the management of an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the owner of the concern.

30. Power to call for repayment before agreed period.—Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation,—

(a) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance; or

(b) if the industrial concern has failed to comply with the terms of its contract with the Financial Corporation in the matter of the loan or advance; or

(c) if there is a reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof; or

(d) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given; or

(e) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced; or

(f) if for any reason it is necessary * * * to protect the interests of the Financial Corporation.

31. Special provisions for enforcement of claims by Financial Corporation—

(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 30 and the industrial concern fails to make such repayment, any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the district judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:—

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Corporation as security for the loan or advance; or

(b) for transferring the management of the industrial concern to the Financial Corporation; or

(c) for an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.

32. Procedure of district judge in respect of applications under section 31.—

(1) When the application is for the reliefs mentioned in clauses (a) and (c) of sub-section (1) of section 31, the district judge shall pass an *ad interim* order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken under section 31, with or without *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

(2) When the application is for the relief mentioned in clause (b) of sub-section (1) of section 31, the district judge shall grant an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment and issue a notice calling upon the industrial concern to show cause, on a date to be specified in the notice, why the management of the industrial concern should not be transferred to the Financial Corporation.

(3) Before passing any order under sub-section (1) or sub-section (2), the district judge may, if he thinks fit, examine the officer making the application.

(4) At the same time as he passes an order under sub-section (1), the district judge shall issue to the industrial concern a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it to show cause on a date to be specified in the notice why the *ad interim* order of attachment should not be made absolute or the injunction confirmed.

(5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the district judge shall forthwith make the *ad interim* order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the district judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908 (Act V of 1908), in so far as such provisions may be applied thereto.

(7) After making an investigation under sub-section (6), the district judge may—

(a) confirm the order of attachment and direct the sale of the attached property;

(b) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;

(c) release the property from attachment;

(d) confirm or dissolve the injunction; or

(e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf.

Provided that when making an order under clause (c), the district judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit:

Provided further that unless the Financial Corporation intimates to the district judge that it will not appeal against any order releasing any property from attachment, such order shall not be given effect to, until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs, until the appeal is disposed of.

(8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908) for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder.

(9) Any party aggrieved by an order under sub-section (5) or sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper.

(10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under sub-section (1) of section 31, nothing in this section shall be construed as giving to the Financial Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law.

(1) The functions of a district judge under this section shall, in a presidency-town, be exercised by the principal judge of the City Civil Court, if any, having jurisdiction or by the High Court.

CHAPTER IV

INVESTMENT OF FUNDS, ACCOUNTS AND AUDIT

33. Funds of the Financial Corporation.—(1) Every Financial Corporation shall have its own fund, and all receipts of the Financial Corporation shall be carried thereto and all payments by the Corporation shall be made therefrom.

(2) All moneys belonging to the fund shall be deposited in the Reserve Bank or with any agency of the Reserve Bank other than a Government treasury or in a scheduled bank in consultation with the Reserve Bank.

34. Investment of funds.—The Financial Corporation may invest its funds in the securities of the Central Government or of any State Government.

35. Disposal of profits.—(1) The Financial Corporation shall establish a reserve fund.

(2) After making provision for bad and doubtful debts, depreciation of assets and all other matters which are usually provided for by banking companies, the Financial Corporation may out of its net annual profits declare a dividend:

Provided that for so long as the reserve fund is less than the paid-up share capital of the Financial Corporation and until there has been repaid to the State Government such sum, if any, as that Government may have paid under guarantee given in pursuance of section 6, or under any guarantee given in pursuance of sub-section (2) of section 7, the rate of such dividend shall not exceed the rate guaranteed by the State Government under section 6.

(3) Notwithstanding anything contained in this section, no dividend paid under this section shall under any circumstances exceed the rate of five per cent. per annum and if, in respect of any financial year after the reserve fund becomes equal to the share capital of the Financial Corporation, there is a surplus in the net profits after declaring a dividend at the rate specified in this sub-section, such surplus shall be paid to the State Government.

36. General meetings.—(1) A general meeting (hereinafter referred to as the annual general meeting) shall be held annually at a place in the State within two months from the date on which the annual accounts of the Financial Corporation are closed, and a general meeting may be convened by the Board at any other time.

(2) The shareholders present at the annual general meeting shall be entitled to discuss the annual accounts, the report of the Board on the working of the Financial Corporation throughout the year and the auditor's report on the annual balance sheet and accounts.

37. Audit.—(1) The affairs of the Financial Corporation shall be audited by not less than two auditors duly qualified to act as auditors of companies under sub-section (1) of section 144 of the Indian Companies Act, 1913 (VII of 1913), one of whom shall be appointed by the State Government in consultation with the Comptroller and Auditor General of India and the other elected in the prescribed manner by the parties mentioned in clauses (c) and (d) of sub-section (3) of section 4, and such remuneration as the State Government may fix shall be paid to the auditors by the Financial Corporation.

(2) Every auditor shall be supplied with a copy of the annual balance-sheet of the Financial Corporation, and it shall be his duty to examine it, together with the accounts and vouchers relating thereto, and every auditor shall have a list delivered to him of all books kept by the Financial Corporation and shall at all reasonable times have access to the books, accounts and other

documents of the Financial Corporation and may in relation to such accounts examine any director or officer of the Financial Corporation.

(3) The auditors shall make a report to the shareholders upon the annual balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of affairs of the Financial Corporation, and in case * they had called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

(4) The State Government may, in consultation with the Comptroller and Auditor General of India, at any time issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Financial Corporation for the protection of its shareholders and creditors or upon the sufficiency of their procedure in auditing the affairs of the Financial Corporation and may enlarge or extend the scope of the audit or direct that a different procedure in audit be adopted, or direct that any other examination be made by the auditors, if in its opinion the public interest so requires.

(5) The Financial Corporation shall send a copy of every report of the auditors to the Comptroller and Auditor-General of India at least one month before it is placed before the share-holders.

(6) Notwithstanding anything contained in the preceding sub-sections, the Comptroller and Auditor-General of India may, either of his own motion or on a request received in this behalf from a State Government, undertake such audit and at such times as he may consider necessary:

Provided that where the State Government is required to make any payment on account of the guarantee given by it under section 6 or sub-sections (2) of section 7, as the case may be, such audit shall be undertaken by the Comptroller and Auditor-General of India.

(7) Every audit report under sub-section (6) shall be forwarded to the State Government and the Government shall cause the same to be laid before the Legislature of the State.

38. Returns.—(1) The Financial Corporation shall furnish a statement, in the prescribed form, of its assets and liabilities as at the close of business on the last Friday of each month or, if that day is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), as at the close of business on the preceding working day to the State Government and to the Reserve Bank within ten days from the date to which the statement relates.

(2) The Financial Corporation shall furnish in the prescribed form to the State Government and to the Reserve Bank once every three months or, as frequently as the State Government or the Reserve Bank may require, a statement showing the classification of its loans and investments and of all loans guaranteed by it and underwriting agreements entered into by it.

(3) The Financial Corporation shall furnish to the State Government and to the Reserve Bank within three months of the close of each financial year a statement in the prescribed form of its assets and liabilities as at the close of that year, together with a profit and loss account for the year, the auditors' report and a report of the working of the Financial Corporation during the year and copies of the said statement, account and reports shall be published in the Official Gazette and shall also be laid before the Legislature of the State.

CHAPTER V

MISCELLANEOUS

39. Power to give instructions to Financial Corporation on questions of policy.—(1) In the discharge of its functions, the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government.

(2) If any dispute arises between the State Government and the Board as to whether a question is or is not a question of policy, the decision of the State Government shall be final.

(3) If the Board fails to carry out the instructions on the question of policy laid down by the State Government, the State Government shall have the power to supersede the Board and appoint a new Board in its place to function until a properly constituted Board is set up, and the decision of the State Government as to the grounds for superseding the Board shall not be questioned in any court.

40. Declaration of fidelity and secrecy.—Every director, auditor, officer or other employee of the Financial Corporation shall, before entering, upon his duties, make a declaration of fidelity and secrecy in the form set out in the Schedule.

41. Indemnity of directors.—(1) Every director shall be indemnified by the Financial Corporation against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wilful act or default.

(2) A director shall not be responsible for any other director or for any officer or other employee of the Financial Corporation or for any loss or expenses resulting to the Financial Corporation by the insufficiency or deficiency of value of or title to any property or security acquired or taken on behalf of the Financial Corporation or by the wrongful act of any person under obligation to the Financial Corporation or by anything done in good faith in the execution of the duties of his office or in relation thereto.

42. Offences.—(1) Whoever, in any bill of lading, warehouse receipt or other document given to the Financial Corporation, whereby security is given or is purported to be given to the Financial Corporation for any accommodation granted by it under this Act, wilfully makes any false statement or knowingly permits any false statement to be made shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

(2) Whoever, without the consent in writing of the Financial Corporation, uses the name of the Financial Corporation in any prospectus or advertisement shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) No court shall take cognizance of any offence punishable under this Act otherwise than on a complaint in writing signed by an officer of the Financial Corporation authorised by the Board in this behalf.

43. Provisions relating to income-tax and super-tax.—For the purposes of the Indian Income-tax Act, 1922 (XI of 1922), the Financial Corporation shall be deemed to be a company within the meaning of that Act and shall be liable to income-tax and super-tax accordingly on its income, profits and gains:

Provided that any sum paid by the State Government under the guarantee given in pursuance of section 6 or under any guarantee given in pursu-

sub-section (2) of section 7 shall not be treated as the income, profits and gains of the Financial Corporation and any interest on debentures or bonds paid by the Financial Corporation out of such sum shall not be treated as expenditure incurred by it:

Provided further that in the case of any shareholder such portion of a dividend as has been paid out of any such sum advanced by the State Government shall be deemed to be its income from "interest on securities" declared to be income-tax free within the meaning of section 8 of that Act.

44. Act XVIII of 1891 to apply to the books of the Financial Corporation.—The Financial Corporation shall be deemed to be a bank for the purposes of the Bankers Books Evidence Act, 1891 (XVIII of 1891).

45. Liquidation of Financial Corporation.—No provision of law relating to the winding-up of companies or corporations shall apply to the Financial Corporation, and the Financial Corporation shall not be placed in liquidation, save by order of the State Government and in such manner as it may direct.

46. Power to apply Act to certain financial institutions in existence at commencement of Act.—(1) The Central Government may, by notification in the Official Gazette, direct that all or any of the provisions of this Act shall, subject to such exceptions and restrictions as may be specified, apply to any institution in existence at the commencement of this Act which has for its object the financing of industrial concerns, and on the issue of such notification, the institution shall be deemed to be a Financial Corporation established by the State Government for the State within the meaning of this Act, and the provisions of this Act shall become applicable thereto according to the tenor of the notification.

(2) Any notification issued under sub-section (1) may suspend the operation of any enactment applicable to any such institution immediately before the issue of the notification.

47. Power of State Government to make rules.—The State Government may make rules not inconsistent with the provisions of this Act to give effect to the provisions of this Act and in particular, such rules may provide for the limitation on the voting rights of a shareholder and the manner in which such voting rights may be exercised and where there is any inconsistency between the rules and the regulations made under this Act, the rules shall prevail.

48. Power of Board to make regulations.—(1) The Board may, after consultation with the Reserve Bank and with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the holding and conduct of elections under this Act, including the final decision on doubts or disputes regarding the validity of elections;

(b) the manner in which, and the conditions subject to which, the first allotment of the shares of the Financial Corporation shall be made;

(c) the manner in which, and the conditions subject to which, the shares of the Financial Corporation may be held and transferred and generally all matters relating to the rights and duties of shareholders;

(d) the manner in which general meetings shall be convened, the procedure to be followed thereat and the manner in which voting rights may be exercised;

(e) the calling of meetings of the Board and of the Executive Committee, fees for attending meetings thereof and the conduct of business thereat;

(f) the manner and terms of issue and repayment of bonds and debentures by the Financial Corporation;

(g) the conditions which the Financial Corporation may impose in granting loans or advances;

(h) the manner of determining the sufficiency of the security taken under sub-section (2) of section 25;

(i) the forms of returns and statements required under this Act,

(j) the duties and conduct of officers and servants and agents of the Financial Corporation;

(k) the establishment and maintenance of provident or other benefit funds for employees of the Financial Corporation;

(l) the taking over of the management of any industrial concern on a breach of its agreement with the Financial Corporation;

(m) the appointment of *ad hoc* committees for technical and other advice for the purposes of this Act; and

(n) generally, the efficient conduct of the affairs of the Financial Corporation.

(3) All regulations made under this section shall be published in the Official Gazette and shall come into force on such publication.

THE SCHEDULE

(See section 40)

DECLARATION OF FIDELITY AND SECRECY

I, do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as a director, officer, employee or auditor (as the case may be) of the Financial Corporation and which properly relate to any office or position in the said Financial Corporation held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Financial Corporation, nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Financial Corporation and relating to the business of the Financial Corporation.

Signature.

Signed before me:

308 G of I

The following Report of the Select Committee on the Bill to provide for the establishment of a Tariff Commission and to regulate its duties and functions, was presented to Parliament on the 10th August, 1951:—

We, the undersigned Members of the Select Committee to which the Bill to provide for the establishment of a Tariff Commission and to regulate its duties and functions was referred, have considered the Bill and have now the honour to submit this our report, with the Bill as amended by us annexed thereto.

Clause 3.—Although we agree with the recommendation of the Fiscal Commission that the Tariff Commission should ordinarily consist of five members, the majority of us are of the opinion that the position should remain flexible as proposed in the Bill so that the number of members may be increased if the volume of work demands it. We think, however, that the maximum should be increased from four to five.

By a majority we have also decided that the proviso to sub-clause (1) providing for the appointment of temporary additional members should remain.

As a matter of drafting we have recast this clause.

Clause 4.—Although we do not propose to make any changes in this clause, we recommend that except where necessary officers of the Government in the administrative services should not be appointed as members of the Commission, and if any such appointments have to be made, they should be confined to the minimum.

Clause 5.—In our opinion a Member of Parliament or of a State Legislature should not be disqualified for appointment as a member of the Commission, but the law should provide for the vacation of his seat on his being appointed a member. We also feel that the proviso to sub-clause (1)(b) should be omitted as, firstly, it is unnecessary, and secondly, it may have the effect of negativing what is sought to be achieved by sub-clause (1)(b). The clause has been redrafted accordingly.

Clause 6.—Although we do not feel called upon to make any changes in sub-clause (3), we recommend that in the case of temporary additional members of the Commission the consent of the Central Government to their holding private appointments after the termination of their office should be freely given. We also feel that as membership of the Commission is a high office there is no need to prescribe a penalty for securing compliance with the provisions of this sub-clause.

Clause 7.—In our opinion the powers of removal contained, for example, in sub-clauses (a) and (b) require to be regulated so as to prevent the arbitrary exercise thereof, and we have, therefore, provided in clause 24 for rules to be made in this behalf. As an additional safeguard we have provided that every case of removal should be reported to Parliament. Incidentally we have added the words “or mentally” in sub-clause (a), and have made a few minor drafting changes.

Clause 8.—Although in our opinion no amendment is called for in this clause, we recommend that in making rules in this behalf the Central Government should provide that appointments above a certain limit, say Rs. 300 per mensem, should be made only on the recommendation of the Union Public Service Commission while appointments below that limit may be made by the Commission.

Clause 11.—In sub-clause (1)(a) we have substituted the words “or in any other suitable form” for the word “otherwise” to indicate clearly that protection may assume any form, whether fiscal or non-fiscal. In the nature of things it is difficult to specify all forms of protection. We have also omitted the words “primary or secondary” as unnecessary. Moreover, in the absence of suitable definitions these words may cause some difficulty.

In sub-clause (1)(c) we have omitted the word "manufacture" as being irrelevant and the change in sub-clause (1)(d) is consequential upon the amendment to clause 13.

A new sub-clause (1)(e) has been added providing for the reference to the Tariff Commission of protected industries where the protection given requires to be further considered with a view to its modification or abolition.

Suitable provisions exist in the Indian Tariff Act, 1934 enabling the Central Government to take action in emergencies and a provision on the lines of sub-clause (2) is hardly necessary. In our opinion this provision should be omitted.

Clause 13.—In our opinion the powers of the Commission to make inquiries *suo motu* should also extend to the matters specified in clause 11(1)(b) and in the new clause 11(1)(e).

Clause 14.—We have made express provision in the new sub-clause (1)(e) to ensure that due regard is given by the Tariff Commission to cottage and other small scale industries engaged in the same or allied field before granting protection to an industry. We have also amended sub-clause (3) indicating two more matters in respect of which conditions may be prescribed. A suggestion was made that a reference to conditions relating to labour should also find a place here, but as this is implicit in sub-clause (1)(a) we have not thought it necessary to include any such express provision.

Clause 16.—In our opinion a time limit should be fixed within which the Government should be compelled to take action on every report of the Tariff Commission. We have redrafted sub-clause (2) accordingly.

Clause 18.—We have redrafted this clause so as to provide for the appointment of assessors on the request of the Commission also.

Clause 20.—We have omitted sub-clause (3) as being unnecessary and too drastic for the purposes of this Bill.

Clause 22.—We think that the penalties prescribed in this clause should be enhanced to one thousand rupees and six months respectively.

Clause 24.—We have included a specific reference to a few more items on which rules can be made.

Clause 26.—This is new and provides for the construction of references to the Tariff Board in other enactments.

9. The Bill was published in Part II—Section 2 of the *Gazette of India*, dated the 24th March, 1951.

9. We think that the Bill has not been so altered as to require circulation under rule 77(4) of the Rules of Procedure and Conduct of Business in Parliament, and we recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR
 B. R. AMBEDKAR
 HAREKRUSHNA MAHTAB
 D. P. KARMARKAR
 M. L. DWIVEDI
 SHREE NARAYAN DAS
 KHANDUBHAI K. DESAI
 MUNISHWARDATT UPADHYAY
 SOCHET SINGH
 P. S. DESHMUKH
 G. A. THIMMAPPA GOWDA
 P. KUNHIRAMAN
 V. S. SIVAPRAKASAM

*K. T. SHAH
 *ARUN CHANDRA GUHA
 THAKUR LALSINGH
 RAJ BAHADUR
 **THAKUR DAS BHARGAVA
 *GOKULBHAI DAULATRAM BHATT
 KAKA BHAGWANT ROY
 O. V. ALAGESAN
 C. D. PANDE

NEW DELHI;

The 10th August, 1951.

MINUTES OF DISSENT

I

I have signed this report subject to the following note.

2. The Bill, as reported upon, still provides for a term of three years to every whole-time member of the Commission. Considering that the persons found competent and suitable for such posts would be, in all probability, past middle age; considering, further, that they would be allowed a second term, if re-appointed, for three years only, it would be most unfair, in my opinion, to leave any such person, at the end of six years of conscientious public service, to shift for himself.

3. It is true, provision has been made for permitting any such person, under suitable circumstances, after retirement, to take up any other employment, conformable to his aptitude or opportunity but, unless such permission is to become a mere formality, it would place the retiring Commissioner under a severe strain, under which, in the concluding months of his term of office, he may not be able to discharge his duties as efficiently and whole-heartedly as may be desired.

4. I have, further, an objection, on principle, for granting such permission, except under wholly exceptional and unexpected circumstances. The opportunity to take employment in a private concern, especially in one of the kind that has received State aid or protection of some sort during the term of such a person's office, is apt to be abused. I would, therefore, guard, as effectively as possible, against any such temptation to impropriety. No permission should, accordingly, be given to seek and accept employment under private business or enterprise, unless an extraordinary and unusual situation has arisen over which the person seeking such permission had no control. These posts should be made, like the judges, integral part of the national public service, with all its rights and obligations, even though persons appointed to these posts, may have been selected rather late in life.

5. An appropriate and effective solution would be to lengthen the term of office, and make it, in the first instance, for five years, and, under suitable circumstances, allow another term of not exceeding five years. By this time the person concerned would have, normally speaking, arrived at an age, where superannuation is the correct step. In no case should these be life appointments for any person; and no vested interests should be suffered to be created, or even to be suspected. Superannuation would be easier, and the public

* Subject to a Minute of Dissent.

** The Minute of Dissent was received after the Report was presented to Parliament. It has therefore not been included in this report.

service rendered would not have been all to no purpose, so far as making provision for one's old age is concerned, if some kind of a proportionate pension is allowed in all such cases, as a matter of course and right. The analogy of the Judges' pensions may be quoted, in this connection, to reinforce the argument.

6. Another matter on which some change in the report is necessary relates to the form, or the manner, in which protection, encouragement, or assistance to an industry in need of such help may be provided. Clause 11(a), as amended in the Select Committee, provides for "protection (whether by the grant of subsidies or the levy of protective duties, or in any other suitable form)". But, while mentioning, specifically, only two of the important forms in which effective assistance, relief or protection may be afforded, in appropriate cases, a large category is left undefined. If it is found necessary and desirable specifically to mention two of the forms of State help to industry, I see no reason why other forms, equally orthodox and perhaps more effective, should not even be mentioned. The aim of State aid to indigenous industry—call it protection if you like—was wholly different before the achievement of national independence from what it is and should be to-day. The forms of protection must, consequently, also undergo a corresponding change. The omnibus wording, therefore, in this clause is likely to cause more confusion than real assistance, or effective protection. For many reasons of a political as well as economic nature, it is undesirable to leave the precise form, or combination of forms, in which such aid can be given, to the discretion of the Tariff Commission, or even to that of the Executive Government. Forms of protection may involve grave questions not only of national but also of international policies. It is, therefore, necessary that the various forms be particularised in the basic legislation itself. At the proper time amendments will be moved to give effect to this view.

7. There are other minor issues on which, also, there appears room for amendment, which will be submitted at the proper moment.

NEW DELHI;

The 10th August, 1951.

K. T. SHAH

II

I am in several agreement with the Bill as amended by the Select Committee. But I have some apprehension about some of the provisions.

2. In Section 8 the Tariff Commission has been authorised to appoint its own staff. From our experience in some other autonomous bodies I would very much like to it obligatory for the commission to go through the Union Public Service Commission for all appointments carrying a salary over Rs. 300 per mensem, instead of leaving it to be regulated by rules. In the past the Government have not been very particular in these matters, so it is difficult for me to accept the assurance that the Government would put such a provision in the rules.

3. Section 11 authorises the Commission to give protection to an industry which has not yet started production. This system is already existing; and we cannot say that in all cases only bona fide use has been made of this system. So I wanted a particular time limit—say preferably not exceeding 1 year—to be fixed within which that industry must start production. But the Select Committee has only added a new sub-section (b) to section 14 by which the Commission will be competent to fix such a time limit. Instead of making it optional for the Commission, I would like to have a definite time fixed by the Act.

4. By section 7, a member of the Commission can be removed for physical inability. Here also I would like in all such cases, a Medical Board should be consulted. But the Select Committee has only put a new sub-section (b) to section 24 by which the Government by rules may provide for such a procedure.

5. Lastly I would like the members of the Commission to be appointed for 5 years instead of 3 years. The responsibilities and the post-retirement disabilities of the members are such as to limit the scope of choice to a narrow circle. So a longer tenure of appointment would have been better.

NEW DELHI;

The 10th August, 1951.

ARUN CHANDRA GUHA

III

I am constrained to write this note of dissent.

CLAUSE 6—*Conditions of service of members of the Commission*

2. *Term of office.*—In sub-clause 1, the term of office proposed is three years. This period seems to be short. It must be raised to five years to stabilise the working of the Tariff Commission. Five years period will go a great way in maintaining continuity of work and uniformity of action. We are now starting to set up a permanent body required to discharge manifold functions and duties. This body has in the first instance to do much spade work in organizing its office etc. and therefore it is all the more necessary to extend the term to five years.

3. *Restriction on ceasing members.*—Sub-clause 3 of clause 6 runs as follows:—

"(3) A member of the commission ceasing to hold office as such shall not hold any appointment in any private industry or under-taking for a period of three years from so ceasing to hold office, save with the consent in writing of the Central Government."

This is a novel sort of future disability introduced. This will apply to permanent as well as to *ad hoc* members of the Commission under clause 3 but for *ad hoc* members, the report of the Select Committee, which has no legal status, recommends to the Central Government to be liberal in granting consent to hold appointments after ceasing to hold office. Whom are we restricting and for what? Let us examine these points. It is said that the members of Tariff Commission will be dealing with important matters concerning the industry and therefore a check proposed would keep them clean and impartial otherwise they are likely to be influenced by the future gain after relinquishing office.

4. First of all we must realise whom are we appointing? They will be 'men of ability and standing' enjoying and inspiring public confidence. They are required to submit detailed reports with their recommendations; the reports will mainly depend on thorough inquiries: these inquiries will be open to the public. And after all what is this Commission for? It has to tender advice to the Central Government. The Government might or might not accept the recommendations of this Commission and even if the Tariff Commissions' recommendations are unreasonably accepted by the Government the Parliament is there finally to approve or disapprove the action of the Government.

5. We do not expect the members of the Tariff Commission, men of integrity and position, to act in a manner of favouritism and contrary to the confidence reposed in them. But let us assume for a moment the worst possible case. The member who is bought over or influenced does not himself accept an appointment to conform to the letter of the law but he indirectly in numerous ways receives the benefits of favour shown to an industry. How are we going to check that? And what are we going to do for one who contrary to the restriction accepts an appointment? Our report says: "we also feel that as membership of the Commission is a high office there is no need to prescribe a penalty for securing compliance with the provisions of this

sub-clause." On the one hand we put them on so high a level on the other hand, we begin to doubt their integrity. This is curious and incongruous.

6. I wish to allude to sub-clause (1) of clause 5 wherein it is said: "No person shall be qualified for appointment as, or for continuing to be, a member of the Commission if he has directly or indirectly any such financial or commercial interest in any industry or undertaking as is likely to affect him in the discharge of his duties as a member of the Commission."

7. What harm will be done if a ceasing member actively joins an undertaking in which he had, as a continuing member, some limited interest?

8. One would naturally ask, which is the other Commission embodying in its structure such a 'salutary' provision? Taxation on Income (Investigation Commission) Act does not have such a provision. Income Tax Investigation Commission has much more powers to do and undo a thing. And are we placing restrictions on Ministers and others who hold very important offices of profit and who command executive powers? As far as I know such a restriction is non-existent in similar Acts of other countries. So on principle, I think that such a restriction should not be imposed on the members of the Tariff Commission which is an advisory body.

9. But if, for my inability to express and convince, my point of view is not acceptable, I make the following suggestions also:—

- (a) period of three years to be reduced;
- (b) pension, gratuity or suitable allowance be given to the ceasing member till the time he is permitted to take an appointment;
- (c) sub-clause 3 may be so amended, so as to leave scope for a ceasing member to take an appointment in an industry not enquired into during his tenure of office.

CLAUSE 11—Reference—obligatory or optional?

Clause 11 says: "The Central Government may refer to the Commission for inquiry and report any matter....."

10. I think that the Government should refer all applications asking for grant of protection. As it stands at present, the Government may or may not refer any matter.

11. When we are enacting a measure to set up an expert body to tender advice taking into consideration all matters governed by the principles and directions contained in clause 14, the Government should by way of routine refer all applications received. The present procedure of the Government before reference to the Tariff Board is as follows:

".....An industry seeking protection or assistance from Government has first to submit its application to the Ministry of Commerce. This application is placed before an Inter-Departmental Committee consisting of representatives of the Ministries of Commerce, Industry and Supply and Finance. Representatives of other Ministries if concerned with any particular industry, are also present at such meetings. If it is found that a *prima facie* case has been made out by the industry in question that it is a fit case to go before the Tariff Board, the Ministry of Commerce refers the case to the Board for investigation and report. This reference is made through a Resolution of Government....." (Para. 12, Review of Work of the Indian Tariff Board.....from 1945 to 1949).

12. As I am not yet in possession of relevant factual information asked for, I cannot definitely state how much time is taken in the process of reference. But it seems to me that much energy, time and money must be required on the part of the Government and the industry concerned. Is there a necessity

for this preliminary examination of a case before reference? Departmental experts may make out a *prima facie* case which, when reported by the Tariff Board, may not deserve protection or assistance sought for (*vide* annexure B of the Review of Work of the Tariff Board); and it is difficult to know how many cases were not referred to the Tariff Board.

13. And therefore if, as a matter of course, applications are straightforwardly referred to the Tariff Commission, time, energy and money will be saved, duplicating of work would be avoided, and nothing would be lost.

14. It may be said that the Government should be the final authority to refer an application asking for protection, because it can alone take into consideration the Government policy. I do not think there is much substance in this; because the Tariff Commission, before recommending, has to bear in mind 'the public interest' [(e) of (2) of Clause 14.]

15. I have only touched the points, as this note is to be submitted in time.

GOKULBHAI DAULATRAM BHATT.

NEW DELHI;

The 10th August, 1951.

(AS AMENDED BY THE SELECT COMMITTEE.)

(*Words underlined indicate the amendments suggested by the Select Committee; asterisks indicate omissions.*)

BILL No. 17 OF 1951

A Bill to provide for the establishment of a Tariff Commission and to regulate its duties and functions

Be it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Tariff Commission Act, 1951.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions—In this Act, unless the context otherwise requires,—

(a) “Commission” means the Tariff Commission established under this Act;

(b) “chairman” means the chairman of the Tariff Commission;

(c) “member” means a member of the Tariff Commission and includes the chairman of the Commission;

(d) “prescribed” means prescribed by rules made under this Act;

(e) “regulations” means the regulations made by the Commission under section 25.

CHAPTER II

ESTABLISHMENT OF THE TARIFF COMMISSION

3 Constitution of a Tariff Commission and appointment of chairman thereof.—For the purposes of this Act, the Central Government shall establish a Tariff Commission which shall consist of not less than three, but not exceeding five,

whole-time members appointed by the Central Government, and one of them shall be nominated by the Central Government to be the chairman thereof:

Provided that the Central Government may, as often as may be necessary, appoint not more than two additional members on the Commission for such purpose and period and on such conditions as it thinks fit.

* * *

4. Qualifications for membership of the Commission.—The persons to be appointed as members of the Commission shall be men of ability and standing who have shown capacity in dealing with problems relating to commerce or industry or in administration or who have special knowledge in any matter as renders them suitable for appointment on the Commission.

5. Disqualifications for membership—(1) No person shall be qualified for appointment as, or for continuing to be, a member of the Commission if he has * * * * directly or indirectly any such financial or commercial interest in any industry or undertaking as is likely to affect him in the discharge of his duties as a member of the Commission.

* * *

(2) The appointment as a member of the Commission of any person who is a Member of Parliament or of the Legislature of any State shall be void unless within one month of the date of his appointment he ceases to be such Member, and if any member of the Commission is elected as a Member of Parliament or of any State Legislature, he shall cease to be a member of the Commission as from the date of such election.

(3) Every member shall, whenever required by the Central Government so to do, furnish to it such information as it may require for the purpose of securing compliance with the provisions contained in * * * * * sub-section (1).

* * *

6. Conditions of service of members of the Commission.—(1) Every whole-time member of the Commission shall hold office for a period of three years from the date of his appointment:

Provided that a member relinquishing his Office on the expiry thereof shall be eligible for reappointment for a second period of three years

(2) There shall be paid to the members of the Commission such salaries and allowances as may be determined by the Central Government:

Provided that such salaries and allowances shall not be varied to the disadvantage of a member after his appointment.

(3) A member of the Commission ceasing to hold office as such shall not hold any appointment in any private industry or undertaking for a period of three years from so ceasing to hold office, save with the consent in writing of the Central Government.

7. Power of Central Government to remove members from office in certain cases.—(1) The Central Government may remove from office any member of the Commission who has been adjudged an insolvent or has been convicted of an offence involving moral turpitude, and also any member who, in the opinion of the Central Government,—

(a) has become physically or mentally incapable of acting as such member, or

(b) has so abused his position as to render his continuance in office detrimental to the public interest, or

(c) has incurred the disqualification specified in sub-section (1) of section 5.

(2) The removal of any member under sub section (1) shall be reported, as soon as may be, to Parliament

8. Appointment of officers and servants of the Commission.—Subject to such rules as may be made in this behalf, the Commission may for the purpose of enabling it to efficiently discharge its functions under this Act appoint such number of officers and servants as it may think fit and determine their conditions of service.

9. Sittings of the Commission.—(1) Subject to the regulations, the Commission may hold sittings in any part of India in such place or places as it may deem most convenient for the transaction of its business or proceedings and shall keep the minutes of its proceedings in such form as it may think fit

(2) Sittings of the Commission shall be convened by the chairman and shall be open to the public unless the Commission in any particular case decides otherwise.

(3) The chairman shall preside at all sittings of the Commission at which he is present and in his absence from any such sitting the members present thereat shall elect one of the members to preside as chairman.

10. Vacancy not to invalidate proceedings.—No act or proceeding of the Commission shall be deemed to be invalid by reason merely of any vacancy in or any defect in the constitution of, the Commission.

CHAPTER III

FUNCTIONS OF THE COMMISSION

11. Reference of matters relating to protection of industries generally to the Commission.—The Central Government may refer to the Commission for inquiry and report any matter requiring in its opinion—

(a) the grant of protection (whether by the grant of subsidies or the levy of protective duties or in any other suitable form) for the encouragement of any * * * * * industry in India (including any industry which has not started production but which is likely to do so if granted suitable protection);

(b) an increase or decrease in the duties of customs or other duties in relation to any industry for the protection thereof;

(c) action to be taken in relation to the dumping of goods in the market occasioned by excessive import * * * * *, or otherwise;

(d) action to be taken where an industry is taking undue advantage of the tariff protection granted to it, particularly with reference to whether the protected industry is—

(i) charging unnecessarily high prices for its goods, or

(ii) acting or omitting to act in a manner which results in high prices being charged to consumers through limitation of quantity, deterioration in quality or inflation of cost of production and the like, or

(iii) acting in restraint of trade to the detriment of the public;

(e) further action to be taken in relation to the protection granted to an industry, with a view to its increase, decrease, modification or abolition, according to the circumstances of the case.

* * *

12. Reference to the Commission of additional matters arising out of protection.—The Central Government may also refer to the Commission for inquiry and report any matter relating to—

(a) the effect of protection on—

- (i) the general level of prices in the country,
- (ii) the cost of living of any specified class of people,
- (iii) the different sectors of the country's economy;

(b) the effect of tariff concessions under trade or commercial agreements on the development of any specified industry;

(c) any anomalies that may result from the working of protective or revenue duties (as for example, relationship between the rates of duty on finished goods, partly finished goods and raw materials);

(d) the prices of particular commodities, whether protected or not.

13. Power of Commission *suo motu* to make inquiries.—The Commission may on its own motion inquire into and report to the Central Government on any of the matters referred to in clauses (b), (c), (d) and (e) of sub-section (1) of section 11, or in clauses (a), (b) and (c) of section 12.

14. Principles to be taken into account in making any inquiry under section 11(1)(a).—(1) In making a report in respect of any matter referred to it under clause (a) of sub-section (1) of section 11, the Commission shall among other matters have due regard to—

(a) the cost of production or manufacture in the principal growing, producing or manufacturing regions of India of the commodity produced by the industry claiming protection and the cost which should be taken to be representative of the * * * * * industry concerned;

(b) the approximate cost of production or manufacture in the principal growing, producing or manufacturing centres of foreign countries of the commodity which competes with the commodity produced by the industry claiming protection if the determination of such cost is necessary for the purpose of any case.

(c) the approximate cost of import of any such competing commodity as is specified in clause (b);

(d) the price which may be deemed to be the representative fair selling price for growers, producers or manufacturers in India in respect of the industry claiming protection;

(e) the quantities of the commodity required for consumption and the quantities thereof produced in or imported into India;

(f) the effect of protection, if granted to an industry, on other industries, including cottage and other small scale industries.

(2) On the basis of its findings on the matters referred to in sub-section (1), the Commission shall assess, for the purpose of its report,—

(a) the relative advantages enjoyed by the industry;

(b) the nature and extent of foreign competition;

(c) the possibility of the industry developing sufficiently within a reasonable time to be able to carry on successfully without protection * * * ;

(d) the likely effect of a protective tariff or other form of protection on the interests of the consumer or of industries using the commodity in question, as the case may be;

(e) the desirability or otherwise of protecting the industry in the public interest.

(3) In recommending the grant of protection to any industry, the Commission may specify the conditions which shall be fulfilled before and after the grant of protection, with particular reference to the following points, namely:—

(a) the scale of output;

(b) the quality of its products;

(c) the price charged for its products;

(d) the technological improvements required by the industry;

(e) the need for research in the process of manufacture;

(f) the training of officers, technicians and other persons employed in the industry;*

(g) the use in the industry of indigenous products, whether raw or manufactured;

(h) the time within which an industry, in respect of which protection has been given in advance of production, should start production; and

(i) any other matter in respect of which the Commission considers it necessary to specify conditions.

15. Duties of the Commission.—It shall be the duty of the Commission, at such intervals as may be prescribed,—

(a) to investigate into the manner in which protection in relation to any industry has been working, with particular reference to—

(i) the cost of production of the protected commodity;

(ii) the scale of output of the protected industry;

(iii) the quality of the protected commodity;

(iv) the prospects of future expansion of the protected industry;

(v) the relative competitive position of the industry and the factors entering into it; and

(vi) any other factor having a bearing on the usefulness of the industry to the country's economy;

(b) to investigate into any special conditions that may have been imposed * * * on a protected industry, with particular reference to—

(i) the extent to which and the manner in which the obligations have been discharged,

(ii) the further steps that would be necessary to implement them fully,

(iii) the difficulties, if any, in the way of the full discharge of such obligations,

and to make a report thereon to the Central Government.

16. Action on Commission's report.—(1) Upon receipt of a report made to it by the Commission, the Central Government may take such action as it considers fit in respect of any of the matters dealt with in the report.

(2) A copy of every final report made to the Central Government, together with a report of the action taken thereon by the Central Government under sub-section (1), shall be laid on the table of Parliament within three months of the submission of the report to the Central Government, if Parliament is then sitting, or, if Parliament is not then sitting within seven days of its re-assembly:

Provided that when the report cannot be so laid, a statement explaining the reasons therefor shall be laid on the table of Parliament.

CHAPTER IV

MISCELLANEOUS

17. Reports and statements.—(1) At the end of every financial year or such earlier period as may be prescribed, the Commission shall submit a report to the Central Government containing a detailed account of its activities during the year.

(2) The Central Government may also call for such reports, returns or statements from the Commission from time to time as it considers necessary.

18. Appointment of assessors to help Commission in the discharge of its functions.—I n the course of any inquiry under this Act the Central Government may, either at the request of the Commission or at the request of the Commission, appoint one or more persons possessing special knowledge of any matter relevant to the inquiry to assist the Commission.

19. Members of Commission to be public servants.—All members and officers of the Commission shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

20. Powers of the Commission.—(1) For the purpose of conducting any inquiry under this Act, the Commission shall have all the powers of a civil court while trying a suit, under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of any document;
 - (c) reception of evidence on affidavits;
 - (d) requisitioning any public record from any office;
 - (e) issuing commissions for the examination of witnesses.

(2) The Commission shall have power to require any person to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of any inquiry.

* * *

(3) The Commission shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898), and any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860).

21. Statements made by persons to the Commission.—No statement made by a person in the course of giving evidence before the Commission shall subject

him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement—

(a) is made in reply to a question which he is required by the Commission to answer, and

(b) is relevant to the subject matter of the inquiry.

22. Restriction on disclosure of information.—(1) No information relating to any industry being information which has been obtained by or on behalf of the Commission for the purpose of its functions under this Act shall, without the previous consent in writing of the owner for the time being of that industry, be disclosed otherwise than in compliance with or for the purposes of this Act.

(2) Nothing in the preceding sub-section shall apply to any disclosure of information made for the purpose of any legal proceeding pursuant to this Act or of any criminal proceeding which may be taken, whether pursuant to this Act or otherwise, or for the purposes of any report relating to any such proceeding.

(3) If any person discloses any information in contravention of this section, he shall be punishable on conviction with fine, which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

23. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against any member, officer or servant of the Commission for anything which is in good faith done or intended to be done under this Act.

24. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for—

(a) the salaries and allowances payable to members, officers and servants of the Commission and their conditions of service;

(b) the procedure to be followed before any member can be removed from office under section 7;

(c) the intervals within which reports under section 15 shall be made by the Commission;

(d) the form in which and the period within which reports under section 17 shall be submitted to the Central Government;

(e) the fees or allowances that may be paid to persons appointed under section 18 to assist the Commission.

25. Power to make regulations.—Subject to the provisions contained in this Act and in any rules made thereunder, the Commission may, with the previous consent of the Central Government, make regulations for the purpose of enabling it to discharge its functions under this Act, and, in particular, such regulations may provide for—

(a) the conduct of the proceedings of the Commission;

(b) the terms and conditions of service of officers and servants of the Commission;

(c) the delegation to one or more members of the Commission of such functions of the Commission as the Commission may specify.

26. Construction of references to Tariff Board in other laws.—References in the Indian Tariff Act, 1934 (XXXII of 1934), or in any other law for the time being in force to the Tariff Board as set up under any Resolution of the Government of India shall be construed as references to the Tariff Commission established under this Act.

The following Bill was introduced in Parliament on the 16th August, 1951:—

BILL No. 66 OF 1951

A Bill further to amend the Indian Explosives Act, 1884.

Be it enacted by Parliament as follows.—

1. Short title.—This Act may be called the Indian Explosives (Amendment) Act, 1951.

2. Amendment of section 5, Act IV of 1884.—For sub-section (3) of section 5 of the Indian Explosives Act, 1884 (hereinafter referred to as the principal Act), the following sub-section shall be substituted, namely:—

“(3) Any person contravening the rules made under this section shall be punishable,—

(a) if he imports or manufactures any explosive in such contravention, with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both;

(b) if he possesses, uses, sells or transports any explosive in such contravention, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both; and

(c) in any other case, with fine which may extend to one thousand rupees.”

3. Amendment of section 6, Act IV of 1884.—In sub-section (3) of section 6 of the principal Act,—

(i) for the words “shall be punished with fine which may extend to three thousand rupees” the words “shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both” shall be substituted; and

(ii) for the words “each be punished with fine which may extend to three thousand rupees”, the words “each be punishable with fine which may extend to five thousand rupees” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Indian Explosives Act, 1884, empowers the Central Government to regulate by rules the manufacture, possession, use, sale, transport and importation of explosives and to impose penalties for the contravention of those rules. As the Act is essentially of a technical and protective nature, the penalties contemplated by it relate to the commission of technical breaches of the rules and consist of fines only.

There have been numerous instances of late, however, to show that breaches of the rules have resulted in the death of a large number of innocent persons, in many cases including women and children below 16 years of age. Investigations into these accidents reveal that there has been a wanton and wilful disregard of the most important and elementary safety conditions laid down in the rules. The existing penalties which consist only of fines ranging from Rs. 200 to Rs. 3,000 have proved entirely inadequate as a deterrent. It is necessary, therefore, to provide for alternative punishment by way of imprisonment for breaches of the rules, and the present Bill seeks to do this by amending sections 5 and 6 of the Indian Explosives Act.

While cases of technical breaches of the law, such as non-renewal of licenses on the appropriate date or failure to intimate storage of extra quantities of explosives in a magazine or store for a short period, may be punished adequately by the imposition of a fine at the discretion of the courts, the amended Act will also make it possible for the courts to pass severer sentences, by way of imprisonment, in cases of serious violation of the rules, or gross and reckless evasion of license conditions endangering property and the lives of innocent persons.

N. V. GADGIL.

NEW DELHI;

The 7th August, 1951.

The following Bill was introduced in Parliament on the 18th August, 1951:—

BILL No. 69 of 1951

A Bill to make certain provisions for the adjustment and settlement of debts due by displaced persons, for the recovery of certain debts due to them and for matters connected therewith or incidental thereto.

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Displaced Persons (Debts Adjustment) Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States or for different parts thereof.

2. Definitions.—In this Act, unless the context otherwise requires,—

(1) “company” means a company as defined in the Indian Companies Act, 1913 (VII of 1913), and includes a company deemed to be registered under that Act by reason of any of the provisions contained in this Act;

(2) “Companies Act” means the Indian Companies Act, 1913 (VII of 1913);

(3) “compensation” means any compensation paid, whether in cash or in kind, in respect of any immovable property in West Pakistan belonging to a displaced person under any general scheme arrived

at in this behalf between the Government of India and the Government of Pakistan or framed by the Government of India;

(4) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies;

(5) "Co-operative Societies Act" means the Co-operative Societies Act, 1912 (II of 1912), and includes any other law for the time being in force in any State relating to co-operative societies;

(6) "debt" means any pecuniary liability, whether payable present-ly or in future, or under a decree or order of a civil or revenue court or otherwise, or whether ascertained or to be ascertained, which—

(a) in the case of a displaced person who has left or been dis-placed from his place of residence in any area now forming part of West Pakistan, was incurred before he came to reside in any area now forming part of India;

(b) in the case of a displaced person who, before and after the 15th day of August, 1947, has been residing in any area now forming part of India, was incurred before the said date on the security of any property situate in the territories now forming part of West Pakistan:

Provided that where any such liability was incurred on the security of properties situate both in India and in West Pakistan, the liability shall be so apportioned between the said properties that the liability in relation to each of the said properties bears the same proportion to the total amount of the debts as the value of each of the properties as at the date of the transaction bears to the total value of the properties furnished as security, and the liability, for the purposes of this clause, shall be the liability which is relat-able to the property in West Pakistan; .

(c) is due to a displaced person from any other person (whether a displaced person or not) in the territories to which this Act ex-tends;

and includes

any pecuniary liability incurred before the commencement of this Act by any such person as is referred to in this clause which is based on, and is solely by way of renewal of, any such liability as is referred to in sub-clause (a) or sub-clause (b) or sub-clause (c).

Provided that in the case of a loan, whether in cash or in kind, the amount originally advanced and not the amount for which the liability has been renewed shall be deemed to be the extent of the liability.

but does not include

any pecuniary liability due under a decree passed after the 15th day of August, 1947, by any court situate in West Pakistan or any pecuniary liability the proof of which depends merely on an oral agreement;

(7) "displaced bank" means a banking company which, before the 15th day of August, 1947, carried on the business of banking, whether wholly or partially, in any area now forming part of West Pakistan and

is declared to be a displaced bank within the meaning of this Act by the Central Government by notification in the Official Gazette;

(8) "displaced creditor" means a displaced person to whom a debt is due from any other person, whether a displaced person or not;

(9) "displaced debtor" means a displaced person from whom a debt is due or is being claimed;

(10) "displaced person" means any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of West Pakistan, has, after the 1st day of March, 1947, left, or been displaced from, his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan, but does not include a displaced bank;

(11) "prescribed" means prescribed by rules made under this Act;

(12) "Tribunal" means any civil court specified under section 4 as having authority to exercise jurisdiction under this Act;

(13) "verified claim" means any claim registered under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950) in respect of which a final order has been passed under that Act relating to its verification and valuation;

(14) "West Pakistan" means the territories of Pakistan excluding the Province of East Bengal.

3. Over-riding effect of Act, rules and orders.—Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any decree or order of a court, or in any contract between the parties.

Tribunals competent to exercise jurisdiction under this Act.—The State Government may, by notification in the Official Gazette, specify any civil court or class of civil courts as the Tribunal or Tribunals having authority to exercise jurisdiction under this Act and may define the areas in which and the extent to which such jurisdiction may be exercised.

CHAPTER II

DEBT ADJUSTMENT PROCEEDINGS

4. Application by displaced debtors for adjustment of debts.—(1) At any time within one year after the date on which this Act comes into force in any local area, a displaced debtor may make an application for the adjustment of his debts to the Tribunal within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business or personally works for gain.

(2) Every application by a displaced debtor shall contain the following particulars, namely:—

(a) the place where he resides;

(b) the trade, calling, profession or other employment in which he is now engaged and in which he was engaged in West Pakistan before he became a displaced person;

(c) his present average monthly income in India and his average monthly income in or from West Pakistan before he became a displaced person;

(d) the income-tax and super-tax, if any to which he has been assessed for the two years immediately preceding his application;

(e) such other particulars as may be prescribed, and shall be accompanied by the following schedules, namely:—

(i) a schedule containing full particulars of all his debts, whether owed jointly or individually, with the names and addresses of his creditors and joint-debtors, if any, so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by, him;

(ii) a schedule of all his property, both movable and immovable (including claims due to him) which are not liable to attachment either under the provisions of this Act or of any other law for the time being in force, a specification of the values thereof and of the places where the same may be found;

(iii) a schedule of all his property, both movable and immovable (including claims due to him) which are liable to attachment under the provisions of this Act or of any other law for the time being in force; and

(iv) a schedule of all properties in respect of which a claim has been submitted to the registering officer under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950), and, where any order has been passed in relation to the verification and valuation of the claim under that Act, with a certified copy of the order.

(3) All persons whose names are shown in any schedule as having claims against the displaced debtor and all persons whose names are shown as joint-debtors shall be deemed to be the respondents to the application and there shall be filed along with the application as many copies of the application and as many envelopes and notices in the prescribed form duly addressed to the respondents as there are respondents.

6. Rejection of applications in certain cases.—Subject to the provisions contained in section 45, any application made under section 5 may be rejected if—

(a) it does not comply with any of the requirements of that section, or

(b) in the opinion of the Tribunal the applicant has failed to pursue his application with due diligence.

7. Issue of notice.—If the application is not rejected, the Tribunal shall, after filling in the date for hearing in the notices filed along with the application under section 5, cause them to be served on the respondents.

8. Objection by respondents.—In response to a notice under section 7, the respondent may show cause against the application by filing a written statement containing his objections to the application:

Provided that where he does not appear in person or through any authorised legal representative, the written statement may be sent by registered post, acknowledgment due, to the Tribunal after having been signed in the presence of any judicial officer or of a sub-registrar acting under the Indian Registration Act, 1908 (XVI of 1908) and duly attested by the judicial officer or the sub-registrar in token thereof.

9. Proceeding after service of notice on respondents.—(1) If there is a dispute as to the existence or the amount of the debt due to any creditor

or the assets of any displaced debtor, the Tribunal shall decide the matter after taking such evidence as may be adduced by all the parties concerned and, subject to the other provisions contained in this Act, shall pass such decree in relation thereto as it thinks fit.

(2) If there is no such dispute or if the respondents do not appear or have no objection to the application being granted, the Tribunal may, after considering the evidence placed before it and subject to the other provisions contained in this Act, pass such decree in relation thereto as it thinks fit.

10. Claims by creditors against displaced debtors.—Any person having a claim against a displaced debtor may make an application, in such form as may be prescribed, for the determination thereof to the Tribunal within the local limits of whose jurisdiction the displaced debtor actually and voluntarily resides, or carries on business, or personally works for gain, together with a statement of the debts owed to the creditor with full particulars thereof.

11. Procedure on creditor's petition.—(1) Where an application under section 10 has been made, the Tribunal shall cause notice thereof to be served on the displaced debtor calling upon him either to show cause, if any, against the application or to make an application on his own behalf under section 5.

(2) If, in response to a notice under sub-section (1), the displaced debtor in accordance with the provisions of section 5, the further in the matter as if it had commenced with an application by the displaced debtor under section 5, and all the other provisions of this Act shall apply accordingly; but, if the displaced debtor does not choose to make any such application, the Tribunal shall, after considering such evidence, if any, as may be produced before it, determine the claim and, subject to the other provisions contained in this Act, pass such decree in relation thereto as it thinks fit.

12. Objection by creditor to schedule of assets.—(1) Any creditor of a displaced debtor may make an application to the Tribunal stating that the displaced debtor, who has made an application under section 5 or sub-section (2) of section 11, has concealed any part of his assets, and the Tribunal shall, after giving due notice thereof to the displaced debtor, determine the matter.

(2) If the Tribunal finds that the displaced debtor has wilfully and fraudulently omitted to include the assets in his application, the Tribunal may dismiss the application or refuse to allow to the displaced debtor any of the reliefs under this Act to which he would otherwise have been entitled or pass such other order in relation thereto as it thinks fit.

13. Claims by displaced creditors against persons who are not displaced debtors.—At any time within six months after the date on which this Act comes into force in any local area, any displaced creditor claiming a debt from any other person who is not a displaced person may make an application, in such form as may be prescribed, to the Tribunal within the local limits of whose jurisdiction he or the respondent or, if there are more respondents than one, any of such respondents, actually or voluntarily resides, or carries on business or personally works for gain, together with a statement of the debt owing to him with full particulars thereof.

14. Procedure on displaced creditor's petition.—(1) Where an application under section 13 has been made to the Tribunal, the Tribunal shall cause notice thereof to be given to the debtor, calling upon him to show cause, if any, against the application.

(2) If there is a dispute as to the existence or the amount of the debt due, the Tribunal shall decide the matter, after taking such evidence as may be produced before it, and, subject to the other provisions contained in this Act, pass such decree in relation thereto as it thinks fit.

(3) If there is no such dispute or if the debtor does not appear or has no cause to show, the Tribunal may, after considering the evidence placed before it, pass such decree in relation thereto as it thinks fit.

15. Consequences of application by displaced debtor.—Where a displaced debtor has made an application to the Tribunal under section 5 or under sub-section (2) of section 11, the following consequences shall ensue, namely:—

(a) all proceedings pending at the date of the said application in any other civil court in respect of any debt to which the displaced debtor is subject, or with which any of his immovable property is encumbered (except proceedings by way of appeal or review or revision against decrees or orders) shall be stayed, and the records of all such proceedings other than those relating to appeals, reviews or revisions as aforesaid shall be transferred to the Tribunal and consolidated;

(b) all attachments, injunctions, orders appointing receivers or other processes in execution made or issued by any such court and in force at the date of the said application in respect of any such debt shall cease to have effect and no fresh process in execution shall, except as hereinafter expressly provided, be made or issued;

(c) no fresh suit or other proceeding (other than an appeal or a review or revision against a decree or order) shall be instituted against the displaced debtor in any such court in respect of any debt mentioned by him in the relevant schedule to his application.

16. Debts secured on immovable property.—(1) Where a debt incurred by a displaced person is secured by a mortgage, charge or lien on the immovable property belonging to him in West Pakistan, the Tribunal may, for the purpose of any proceeding under this Act, require the creditor to elect to retain the security or abandon it.

(2) If the creditor elects to retain the security, he may apply to the Tribunal, having jurisdiction in this behalf as provided in section 10, for a declaration of the amount due under his debt.

(3) Where in any case, the creditor elects to retain his security, if the displaced debtor receives any compensation in respect of any such property as is referred to in sub-section (1), the creditor shall be entitled—

(a) where the compensation is paid in cash, to a first charge thereon:

Provided that the amount of the debt in respect of which alone he shall be entitled to the first charge shall be that amount as bears to the total debt the same proportion as the compensation paid in respect of the property bears to the total value thereof as determined under

the Displaced Persons (Claims) Act, 1950 (XLIV of 1950), and to that extent the debt shall be deemed to have been reduced;

(b) where the compensation is by way of exchange of property, to a first charge on the property situate in India so received by way of exchange:

Provided that the amount of the debt in respect of which alone he shall be entitled to the first charge shall be that amount as bears to the total debt the same proportion as the value of the property received by way of exchange bears to the value of the original property as determined under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950), and to that extent the debt shall be deemed to have been reduced.

(4) Notwithstanding anything contained in this section, where a debt is secured by a mortgage of agricultural lands belonging to a displaced person in West Pakistan and the mortgage was with possession, the mortgagee shall, if he has been allotted lands in India in lieu of the lands of which he was in possession in West Pakistan, be entitled to continue in possession of the lands so allotted until the debt is satisfied from the usufruct of the lands or is redeemed by the debtor:

Provided that in either case the amount of the debt shall be only that amount as bears to the total debt the same proportion as the value of the lands allotted to the creditor in India bears to the value of the lands left behind by him in West Pakistan and to that extent the debt shall be deemed to have been reduced.

(5) Where a creditor abandons his security in West Pakistan, he shall be treated as an ordinary creditor in relation to the debt and the provisions of this Act shall apply accordingly.

17. Debts secured on movable property.—(1) Where a debt incurred by a displaced debtor is secured by the pledge of movable property belonging to him and such property is in the possession of the creditor, the creditor may realise the sum due to him by the sale of such property, after giving to the debtor reasonable notice of the sale and the surplus sale proceeds, if any, shall be refunded by him to the debtor.

(2) Where possession of such pledged property was given to the creditor when the debt was taken but the creditor is no longer in possession thereof and the pledged property is not available for redemption from the creditor, the creditor shall not be entitled to any decree or other relief against the displaced debtor in relation to the debt whether under this Act or under any other law.

18. Claims against insurance companies.—(1) Where any property in West Pakistan belonging to a displaced person was insured with any insurance company before the 15th day of August, 1947 against fire, theft or civil commotion and such property was burnt, demolished or looted at a time when the contract of insurance was in force, such company shall not be entitled to refuse payment of the sum due under any claim in relation thereto on the ground that—

(a) no report was lodged with the police, or

(b) the claim was not made to the company within the agreed time, or

(c) the disturbances in West Punjab were not civil commotion, or

(d) the displaced person has not fulfilled any other condition of the contract which is of a technical nature and which the Central Government has, by notification in the Official Gazette, specified as a condition of the contract for the purposes of this section, where such non-fulfilment is due to causes beyond the control of the displaced person and is connected with his being a displaced person;

and any contract to the contrary, to the extent to which it is in contravention of the provisions of this sub-section, shall be deemed to have no effect.

(2) Where any property has been burnt, demolished or looted in the circumstances specified in sub-section (1), the Tribunal shall, in every proceeding where it is necessary to do so, determine respectively the amount of the loss, the amount for which the property was insured on the date of such loss, and the amount, if any, paid by the insurance company, and shall make a report thereof to such board or other authority as may be prescribed, and the prescribed board or other authority shall, after taking into account such matters as may be prescribed as being relevant thereto, and subject to any rules made in this behalf, in turn propose to the Tribunal the amount for which the claim against the insurance company shall be decreed, and the Tribunal shall pass a decree accordingly.

(3) The amount realised from the insurance company under any decree passed under sub-section (2) shall first be applied towards the satisfaction of the debt due from the displaced person, and the balance, if any, shall be refunded to the displaced person.

(4) An application under this section may be made, either by a displaced person, having a claim against the insurance company in the circumstances specified in sub-section (1) or by a displaced bank having an interest in the claim of any such displaced person, to the Tribunal within the local limits of whose jurisdiction the displaced person actually and voluntarily resides or carries on business or personally works for gain or, as the case may be, the displaced bank carries on business, for the determination of the amount due in respect of the claim in accordance with the provisions of sub-section (2).

(5) To every proceeding under sub-section (4), the insurance company and if the application is made by a displaced person, the displaced bank having any interest in his claim, and if the application is made by a displaced bank, the displaced person interested in the claim shall all be made parties.

(6) No application under this section shall be entertained in any case where no claim has been made to the insurance company, whether in the form, if any, required by the contract or in any other manner in respect of any such loss as is referred to in this section within one year after the date of this loss.

19. Calls on shares in companies.—(1) Where a company or a co-operative society has made any call upon a displaced person or a displaced bank in respect of any moneys remaining unpaid on any share held by him or it on the 1st day of March, 1947, in any company or co-operative society, as the case may be, and there has been a failure on the part of the shareholder to pay any moneys due in respect of such call, then, notwithstanding anything to the contrary contained in the Companies Act, or in the memorandum or articles of association or the co-operative Societies Act, no interest shall be payable in respect of any such moneys.

due and the company or the co-operative society, as the case may be, shall not be entitled to forfeit the share or any part thereof, and any forfeiture made before the commencement of this Act in respect of any share in the circumstances specified in this sub-section shall be deemed to have had no effect, and no person shall be deemed to have ceased to be a member of the company or co-operative society merely by reason of such forfeiture.

(2) Notwithstanding anything contained in the Companies Act, or in the memorandum or articles of association, or the Co-operative Societies Act, it shall be lawful for a displaced person or a displaced bank to apply to the company or the co-operative society, as the case may be, for the conversion of any partly paid-up share held by him or it in the company or society into such smaller number of fully paid-up shares as the society or company may have issued and in respect of which calls have already been made.

(3) If the company or the co-operative society refuses to comply with any such request as is contained in an application under sub-section (2), the Tribunal may, on application made to it in this behalf and if satisfied that there is no cause for such refusal, issue a direction to the company or the co-operative society accordingly, and the company or society shall be bound to comply therewith.

(4) The provisions of this section shall have effect for a period of ten years from the 15th day of August, 1947, and thereafter shall cease to have effect except as respects things done or omitted to be done.

20. No calls to be made on displaced person or bank when company or co-operative society is in liquidation.—(1) Where a company or a co-operative society is being wound up, no displaced person or displaced bank shall be called upon, notwithstanding anything to the contrary contained in the Companies Act or in the memorandum or articles of association or the Co-operative Societies Act, to make any contribution to the assets of the company or co-operative society, as the case may be, in respect of any share held by him or it in the company or society on the 15th day of August, 1947.

(2) The provisions of this section shall have effect for a period of ten years from the 15th day of August, 1947, and shall also apply in respect of any calls made and not satisfied before that date, and shall cease to have effect after the expiry of the said period except as respects things done or omitted to be done.

21. Power to revise certain decrees and settlements.—(1) Where before the commencement of this Act a decree has been passed by a civil court against, or a settlement has been entered into by, a displaced person or a displaced bank in respect of any debt, the Tribunal shall, on the application of such person or bank, revise it so as to bring it into accord with the provisions of this Act.

(2) In determining the amount due under any such decree or settlement, the Tribunal shall, accept as binding the findings of the court which passed the decree or the facts contained in the settlement, as the case may be, to the extent to which the findings or the facts are not inconsistent with the provisions of this Act:

Provided that the Tribunal shall not determine any claim under any such decree until any appeal or revision filed against it has been finally decided or the period allowed for any appeal therefrom has expired, and

in all such cases the finding of the Tribunal shall be based on the final decree.

22. Apportionment of joint debts.—Where a debt is due from a displaced person jointly with another person, the Tribunal shall, for the purposes of this Act, apportion the liability between them according to the following rules, namely:—

(a) if the liability of each debtor is defined, then according to the defined share of each;

(b) if the debt was taken for any trade or business of the joint debtors, then according to the shares held by each of the joint debtors in the trade or business;

(c) if the debt was taken not in any defined shares or for any trade or business in which the partners have any defined share, the debt shall be apportioned into as many parts as there are joint debtors, and each joint debtor shall be liable only for the part apportioned to him;

(d) if one joint debtor is a displaced person and another is not, the sum apportioned to the non-displaced person shall not be a debt within the meaning of this Act and the creditor may in respect of such debt seek any remedy open to him in a civil court or otherwise;

(e) where the relationship between the joint debtors is that of principal and surety, the principal alone shall, notwithstanding anything to the contrary contained in the Indian Contract Act, 1872 (IX of 1872), be liable to satisfy the liability in the first instance, but if the sum realised from the principal falls short of the sum due to the creditor, he may recover the balance from the surety.

23. Simplified procedure in certain cases.—Where any debt, or each of the debts in a proceeding involving the determination of more than one debt, does not exceed five thousand rupees,—

(a) it shall not be necessary for the Tribunal to take down the evidence of the witnesses in writing at length but the Tribunal, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes and such memorandum shall be written and signed by the Tribunal and shall form part of the record;

(b) the decision of the Tribunal need not contain more than the points for determination and the decision thereon.

24. Presumption respecting registered documents.—It shall be presumed until the contrary is proved that every document registered under the Indian Registration Act, 1908 (XVI of 1908) and produced before the Tribunal has been proved.

25. Application of Act V of 1908.—Save as otherwise expressly provided in this Act, all proceedings under this Act between party and party shall be regulated by the provisions contained in the Code of Civil Procedure, 1908 (Act V of 1908).

26. Signing and verification of applications and written statements.—Every application and the schedules, if any, attached thereto and every written statement filed before the Tribunal for any relief under this Act

shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (Act V of 1908), for the signing and verification of plaints.

27. Production of documents.—(1) Where any books of account or other documents in the possession of the applicant or respondent, as the case may be, are relied on for the purpose of any statement in the application or written statement, the books of account or other documents or, if so prescribed, relevant copies thereof certified in such manner as may be prescribed, shall be filed along with the application or written statement:

Provided that the Tribunal may for sufficient cause allow the books of account or other documents or certified copies of relevant entries in books of account or other documents, as the case may be, to be produced before it at any subsequent stage of the hearing.

(2) Subject to the provisions contained in sub-section (1), a document which ought to be filed along with the application or written statement and which is not so filed shall not, without the leave of the Tribunal, be received in evidence at any later stage of the proceeding.

(3) If a document, which is in the possession or under the control of a displaced creditor, is not produced by him as required by this section, the document shall not be admissible in evidence against the displaced debtor in any proceeding for the recovery of the debt.

28. Contents of decree.—In all cases in which the Tribunal passes a decree on the application of a displaced person, it shall prepare a complete schedule of the creditors and of the assets and liabilities of the displaced person.

CHAPTER III

RELIEFS

29. Cesser of accrual of interest.—On and from the 15th day of August, 1947, no interest shall accrue or be deemed to have accrued in respect of any debt owed by a displaced person, and no Tribunal shall allow any future interest in respect of any decree or order passed by it.

30. Exemption from arrest.—No displaced person shall be liable to arrest or imprisonment in execution of any decree for the recovery of any debt whether passed before or after the commencement of this Act.

31. Further reliefs in the matter of attachment of property.—Section 60 of the Code of Civil Procedure, 1908 (Act V of 1908) shall, in relation to the execution of any decree for a debt against a displaced person (whether passed before or after the commencement of this Act), have effect, as if—

(1) for clause (c), the following clauses had been substituted, namely:—

"(c) houses and other buildings (with the materials and the sites thereof and the land immediately appertaining thereto and necessary for their enjoyment) belonging to an agriculturist and not proved by the decree-holder to have been let out on rent or otherwise to any person other than the father, mother, wife, son, daughter, daughter-in-law, brother, sister or other dependant of the judgment-debtor or to have been left vacant for a period of one year or more;

(cc) milch animals, whether in milk or in calf, kids, animals used for the purpose of transport or draught cart and open spaces

or enclosures belonging to an agriculturist and required for use in case of need for tying cattle, parking carts or stacking fodder or manure;

(ccc) one main residential house and other buildings attached to it (with the materials and the sites thereof and the land immediately appertaining thereto and necessary for their enjoyment) belonging to a judgment-debtor other than an agriculturist and occupied by him;”;

(2) in clause (i), for the words “hundred rupees” the words “two hundred and fifty rupees” had been substituted;

(3) after clause (p), the following clauses had been inserted, namely:—

“(q) two-thirds of the agricultural produce of the judgment-debtor,

(r) so much of any other property of the judgment-debtor as constitutes the means of his livelihood and as is likely, in the opinion of the court, to yield to him an income of not less than two hundred and fifty rupees a month;

(s) any loan advanced or agreed to be advanced by or on behalf of or out of the funds of the Central Government or a State Government, or any asset created from any such loan;”.

32. Scaling down of debts.—(1) Where, on the application of a displaced debtor under section 5 or sub-section (2) of section 11, the Tribunal has determined the amount due in respect of each debt in accordance with the provisions of this Act, it shall proceed to determine the paying capacity of the debtor.

(2) If the paying capacity of the debtor is equal to or exceeds the aggregate sum of all the debts so determined (exclusive of any debt in respect of which the creditor has elected to retain the security in accordance with the provisions of section 16), the Tribunal shall pass a decree for the aggregate sum so determined, specifying the amount due to each creditor and shall allow repayment thereof in instalments, in accordance with the revisions of section 33, unless for reasons to be recorded it directs otherwise.

(3) If the paying capacity of the debtor is less than the aggregate sum referred to in sub-section (2), the Tribunal shall divide the decree into two parts and provide in the first part thereof (hereinafter referred to as the first part of the decree) that the sum equivalent to the paying capacity shall be realised from the assets of the debtor in India, and provide in the second part thereof (hereinafter referred to as the second part of the decree) that the balance shall be realised, subject to the provisions contained in sub-section (6), from any compensation which the debtor may receive:

Provided that if no such compensation is received, the balance shall be irrecoverable.

(4) A creditor who has elected to retain his security under section 16 shall have no right to realise any money due to him from the assets of the debtor in India, but nothing in this sub-section shall affect any of the rights given to him by section 16

(5) A creditor shall have the right at any time at least six months before the receipt by the debtor of compensation to apply that the whole or the balance of the first part of the decree, in so far as any debt due to him is concerned, may be added to the second part of the decree, and thereupon he shall have no right to realise any money from the assets of the debtor in India.

(6) For the purposes of this Act, the amount payable from the compensation for the satisfaction of the second part of the decree shall be that amount as bears to the aggregate amount of all the debts in the second part of the decree [including therein any sum added to it under sub-section (5) and the sum determined in favour of the secured creditor who has not abandoned his security in the manner specified in the proviso to clause (a) of sub-section (3) of section 16] as the compensation in respect of the property of the debtor payable to him under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950) bears to the verified claim, and the balance of the compensation, if any, shall be refunded to the displaced debtor.

(7) Every instalment paid by the displaced debtor in respect of the first part of the decree and any sum payable from the compensation in accordance with sub-section (6) shall be distributed rateably amongst the decree-holders, if more persons than one are entitled thereto:

Provided that the secured creditor who has not abandoned his security under section 16 shall be entitled to a prior charge on the amount payable from the compensation.

(8) Where a displaced person receives compensation by way of exchange of property, then, subject to the prior charge, if any, of a creditor under section 16, the aggregate sum payable in respect of the second part of the decree shall be a second charge upon the property received by way of exchange, but the amount of the second charge shall be that amount as bears to the total sum the same proportion as the value of the property received by way of exchange bears to the value of the original property verified and valued under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950).

(9) Where a displaced person makes a default in the payment of any instalment fixed in respect of the first part of the decree or does not pay the amount determined in accordance with sub-section (4) of section 16 or sub-section (8) of this section for which the first or the second charge may have been created upon the property received by way of exchange, the creditor may apply for the execution of the decree by the attachment and sale of the attachable assets of the judgment-debtor or by the sale of the property obtained by way of exchange upon which the charge has been created, as the case may be, and the amount realised by such execution shall be distributed rateably among the decree-holders:

Provided that nothing contained in this sub-section shall affect the rights of any charge-holders.

(10) For the purposes of this Act, where the compensation is paid in cash, the amount which shall be available for purposes of satisfaction of the debts in the second part of the decree shall in no case exceed seventy-five per cent. of the amount of such compensation; and where it is by way of exchange of property, the extent of the property which shall be available for the said purposes shall in no case exceed seventy-five per cent. in value of such property.

Explanation.—In this section the expression “paying capacity” means the aggregate of the market value of all the attachable assets in India of

the displaced debtor plus the income which is likely to accrue to him for the next three years succeeding, excluding from the computation of such income a sum calculated at the rate of two hundred and fifty rupees a month.

33. Matters to be taken into account in directing payment by instalments.—(1) In directing payment of any sums by instalments under the first part of the decree, the Tribunal shall take into account among other matters—

(a) the present income of the displaced debtor from all sources and the income that is likely to accrue to him in future;

(b) the size of the family dependent upon him for the ordinary necessities of life and the expenditure likely to be incurred for the education and marriage of the children of the displaced person dependent upon him.

(2) Where a displaced creditor is a minor, or a widow or a person who, by reason of any physical disability, is permanently disabled from earning his livelihood, the Tribunal may direct that any instalment payable to him or her shall be twenty-five per cent. higher than what would otherwise have been directed to be paid, and where it does so, it shall also direct that the instalments of other decree-holders shall be proportionately reduced.

34. Variation of maintenance allowances.—Where a displaced debtor has been ordered to pay a monthly allowance to any person for his maintenance under any decree or order of a court, or is liable to pay such allowance under any agreement voluntarily entered into, the rate at which such allowance is payable may be varied by the Tribunal on application made to it in this behalf, if in view of the change in the circumstances of the displaced debtor, the Tribunal thinks that such variation is necessary, and such variation shall have effect for such period as the Tribunal may direct, notwithstanding anything in any decree, order or agreement to the contrary.

35. Taxation of lawyer's fees.—Not more than one-half of the fees payable as costs on taxation in respect of fees to a legal practitioner according to the rules for the time being in force in the territory in which the Tribunal is hearing any proceeding under this Act shall be allowed as fees of the legal practitioner, under any decree passed against a displaced person in any proceeding under this Act.

36. Extension of period of limitation.—Notwithstanding anything contained in the Indian Limitation Act, 1908 (IX of 1908) or in any special or local law or in any agreement,—

(a) any suit or other legal proceeding in respect whereof the period of limitation was extended by section 8 of the Displaced Persons (Institution of Suits) Act, 1948 (XLVII of 1948), and

(b) any suit or other legal proceeding for the enforcement of a claim against an insurance company not falling within the provisions of clause (a) in respect whereof the cause of action has arisen, whether wholly or in part, in the territories now situate in West Pakistan and the institution of the suit or other legal proceeding has become barred by reason of a condition in the contract, which, but for the condition, would have been governed by the provisions contained in clause (a),

may be instituted at any time within one year from the commencement of this Act.

37. Curtailment of period of limitation, for execution of certain decrees.—Notwithstanding anything contained in section 48 of the Code of Civil Proce-

dure, 1908 (Act V of 1908), or in any other law for the time being in force, no order for the execution of a decree in respect of a debt against a displaced person shall be made upon an application presented after the expiration of—

- (a) in the case of decrees passed before the commencement of this Act, six years from such commencement;
- (b) in the case of decrees passed after the commencement of this Act, six years from the date of the decrees;
- (c) in the case of decrees directing payment of money to be made at prescribed intervals or on certain dates, six years from the date of default in making the payment in respect of which the decree-holder seeks to have the decree executed:

Provided that nothing in this section shall be construed as extending the limit of time for execution as provided in section 48 of the said Code for an application for the execution of a decree passed before the commencement of this Act.

38. Sale of immovable property in execution.—(1) Where in the execution of any decree for the recovery of a debt against a displaced person his immovable property is sought to be sold, the court executing the decree shall, in the first instance, determine the market value of the property and, if the value so determined is less than or equal to the amount of the decree together with the proportionate amount of any prior encumbrance, the court shall transfer the property to the decree-holder.

(2) If the value determined under sub-section (1) is greater than the amount of the decree together with the proportionate amount of any prior encumbrance, the court shall determine the portion of such property the value of which is equal to the amount of the decree with the proportionate amount of such prior encumbrance, and may, if it is reasonable or convenient to do so, transfer that portion to the decree-holder.

(3) Where any property is transferred under the provisions of this section to the decree-holder, the decree shall be deemed to be satisfied to the extent of the value of the property so transferred:

Provided that if the decree-holder does not desire to take the property or, in the opinion of the court, it is not reasonable or convenient to transfer the property to him, the property may be sold by public auction, but irrespective of the price fetched at the public auction the market value of the property as determined under this section (and not the amount payable to the decree-holder out of the sale proceeds of the public auction) shall be deemed to be the amount which has been paid to the decree holder in respect of the decree, and satisfaction thereof shall be entered accordingly.

39. Encouragement of settlements.—If the displaced debtor and the creditor or, where there are more creditors than one, such number thereof as hold more than sixty per cent. of the debts due from the displaced debtor enter into an agreement for the adjustment of the liabilities, the Tribunal shall, if an application is made to it in this behalf after giving due notice to the other creditors affected, adjust the remaining debts accordingly if the terms of the agreement are just and fair, and pass a decree accordingly.

CHAPTER IV

APPEALS, REVISIONS AND EXECUTIONS

40. Appeals from decrees or orders.—(1) Save as otherwise expressly provided in this Act, no decree or order of the Tribunal or of the court executing any decree of the Tribunal shall be questioned in any court by way of appeal or revision.

(2) Subject to the provisions contained in section 41, an appeal shall lie from the following decrees or orders of the Tribunal or of any court executing any decree of the Tribunal to the High Court within the limits of whose jurisdiction the Tribunal is situate or, as the case may be, to which it is subordinate, namely:—

(a) a decree passed in respect of the claim of a displaced creditor against a displaced person, a displaced bank or any other person who is not a displaced person or in respect of the claim of a creditor who is not a displaced person against a displaced person or a displaced bank;

(b) a final order passed under section 6, section 12, section 18, section 21, section 22, section 32, section 34, section 38 or section 39;

(c) a final order of the court executing any decree under this Act relating to the execution, discharge or satisfaction of a decree relating to a debt passed against a displaced person or a displaced bank, whether before or after the commencement of this Act.

41. General provisions relating to appeals.—Where the amount or value of the subject-matter in dispute on appeal is five thousand rupees or more, an appeal shall lie to the High Court from any decree or order of the Tribunal.

42. Parties to appeals.—For the purpose of any appeal under this Act, it shall be sufficient if only such persons as, in the opinion of the appellant, are necessary parties to the appeal for the purpose of determining the real questions in controversy between them, are implied as respondents to the appeal:

Provided that where it appears to the High Court at the hearing that any person who was a party to the proceeding before the Tribunal from whose decree the appeal is preferred but who has not been made a party to the appeal is interested in the result of the appeal, the Court may adjourn the hearing to a future date to be fixed by the Court and direct that such person be made a respondent.

CHAPTER V

MISCELLANEOUS

43. Registration of certain societies and companies under Indian law.—

(1) Where the registered office of any society or company registered before the 15th day of August, 1947, under the Societies Registration Act, 1860 (XXI of 1860), or the Co-operative Societies Act, 1912 (II of 1912), or the Indian Companies Act, 1913 (VII of 1913), is situated in the territory now forming part of West Pakistan but a majority of its members for the time being are resident in India, the society, or company, as the case may be, may apply within one year from the commencement of this Act to the Registrar of Societies, Co-operative Societies or Companies, as the case may be, within the legal limits of whose jurisdiction the majority of the members of the governing body as it was constituted on the 15th day of August, 1947, reside or carry on business, for the recognition of the society or company as such in India.

(2) The Registrar, after making such inquiry into the matter as he deems fit, may either accord such recognition or refuse to do so.

(3) The order of the Registrar under sub-section (2) shall be final and shall not be called in question in any court.

(4) Where the Registrar accords recognition to a society, co-operative society or company, he shall cause necessary entries thereof to be made in his register and thereupon, notwithstanding anything to the contrary contained in any law for the time being in force or in any instrument, the society or the company, as the case may be, shall be deemed to have been formed and registered under the relevant law as in force in India, and every such society or company shall, among other matters, have the right to demand and receive any moneys due to it from any person residing or carrying on business in India.

44. Bar of further applications in certain cases.—Subject to the other provisions contained in this Act, where an application made by a displaced debtor under section 5 or under sub-section (2) of section 11, or by a displaced creditor under section 13 has been dismissed, no further application for the same purpose shall lie.

45. Amendment of applications.—Clerical or arithmetical mistakes in any application or in any schedule annexed thereto arising from any accidental slip or omission may at any time be corrected by the Tribunal, either of its own motion or on the application of any of the parties.

46. Service of notices.—Every notice issued under this Act shall be served by registered post, acknowledgment due, unless the Tribunal for reasons to be recorded, directs service in any of the other modes specified in Order V of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908).

47. Effect of failure on the part of displaced debtor to disclose certain matters.—Where a displaced debtor has not mentioned in the relevant schedule to his application any debt owing by him or any property, movable or immovable, belonging to him, whether such property is liable to attachment under the provisions of this Act or of any other law for the time being in force or not liable to attachment at all, nothing contained in this Act shall prevent—

(a) in the case of the debt, the creditor from instituting any proceeding for the recovery thereof under any law for the time being in force other than this Act; and

(b) in the case of the property, from being attached or otherwise dealt with under any such law.

48. Proceedings not to abate on death of debtor.—Notwithstanding anything contained in this Act, no proceeding before a Tribunal shall be deemed to abate by reason merely of the death of the debtor who is a party to the proceeding, and a decree may be passed notwithstanding the death and such decree shall have the same force and effect as if it had been passed before the death took place:

Provided that nothing contained herein shall be deemed to render the legal representative of the deceased debtor liable to satisfy the decree except to the extent to which any of the assets of the deceased debtor have devolved on him.

49. Right of assignee of debt to apply under this Act.—The assignee of a debt from a displaced creditor shall have no right to make any application under this Act, if the assignee is not a displaced person.

50. Past transactions not to be reopened.—If, before any application is made by the displaced debtor under this Act for the adjustment of his debts in accordance with the provisions hereof, the displaced debtor has fully satisfied any of his debts, the transaction shall not be reopened, and no refund shall be allowed to any such debtor by reason of anything contained in this Act.

51. Displaced debtor not to be deemed insolvent.—Notwithstanding anything contained in any law for the time being in force relating to insolvency, no displaced debtor shall be deemed to be insolvent or to have been adjudicated as such within the meaning of any law for the time being in force relating to insolvency by reason only of his applying to get his debts adjusted under this Act, and no proceedings in insolvency shall lie against a displaced debtor in respect of any debt incurred by him before the 15th day of August, 1947.

52. Modification of compromises or arrangements between displaced banks and creditors.—(1) Where, in respect of a displaced bank, a compromise or arrangement has been sanctioned by the court under section 153 of the Companies Act, 1913 (VII of 1913), but, in view of the decrees passed by the Tribunal under this Act against it or in its favour in relation to any debt, it is not possible for the bank to give effect to the compromise or arrangement, it may apply to the court which sanctioned the compromise or arrangement, to modify it in such manner as to it may appear just.

(2) The High Court may, after giving notice to the shareholders and creditors of the bank in such manner as may be prescribed, modify the compromise or arrangement in such manner as it thinks fit.

53. Communication of contents of decrees to prescribed authority.—(1) Every Tribunal shall communicate to the prescribed authority, in such manner as may be prescribed, the amount of the prior charge declared under sub-section (3) of section 16, and shall also forward to it a copy of the decree passed on the application of a displaced debtor under section 5 or sub-section (2) of section 11 and also of any order passed under sub-section (5) of section 32, specifying the amount due to the creditor mentioned therein on the date of the order.

(2) The prescribed authority shall scale down the debts reported to him in accordance with sub-section (6) of section 32 and shall, subject to any rules made in this behalf, meet the prior charge of the secured creditor in accordance with sub-section (2) of section 16 in the first instance and, thereafter distribute the balance of the compensation available for distribution within the meaning of sub-section (10) of section 32 rateably amongst the other decree-holders whose decrees have been reported to him:

Provided that in making any such rateable distribution the prescribed authority shall have due regard to the provisions contained in sub-section (2) of section 33.

(3) The balance from the amount of the compensation payable shall be refunded to the displaced debtor.

(4) Any amount paid by the prescribed authority to any decree-holder under the provisions of this section shall, to that extent, be a valid discharge of the debt due by the displaced debtor.

54. Application of the Limitation Act.—Subject to the other provisions contained in this Act, the Indian Limitation Act, 1908 (IX of 1908) shall apply to the institution of any proceeding under this Act, and, for the

purpose of determining and computing the period of limitation prescribed by that Act in relation thereto, every application made under this Act shall be deemed to be a suit for the purpose of that Act.

55. Order XXXVIII of the First Schedule to Code of Civil Procedure not to apply.—Nothing contained in Order XXXVIII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), relating to arrest and attachment before judgment shall apply to any proceeding under this Act.

56. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Government or any person, in respect of anything done or intended to be done by it or him in good faith in pursuance of this Act or of any rule or order made thereunder.

57. Delegation of powers.—The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may also be exercised by such officer or authority subordinate to the Central Government or by the State Government or by any officer or authority subordinate to the State Government as may be specified in the direction.

58. Power of Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the provisions contained in sub-section (1), the rules so made may provide for all or any of the following matters, namely:—

(a) the additional particulars, if any, which an application under section 5, should contain;

(b) the form in which notices under this Act may be issued;

(c) the form in which applications under section 10 or section 13 may be made;

(d) the registers which should be maintained under this Act;

(e) the authorities required to be prescribed under this Act;

(f) the board or other authority to which any report under sub-section (2) of section 18 may be made and the matters which such board or other authority should take into account in making its report.

59. Power of State Government to make rules.—The State Government may, by notification in the Official Gazette, make rules providing for—

(a) the distribution of business amongst the various Tribunals within the State;

(b) the manner in which copies of documents produced before the Tribunals should be certified;

(c) the returns to be made by the Tribunals and the authorities to which they may be so made.

60. Repeals.—The Displaced Persons (Institution of Suits) Act, 1948 (XLVII of 1948) and the Displaced Persons (Legal Proceedings) Act, 1949 (XXV of 1949) are hereby repealed.

STATEMENT OF OBJECTS AND REASONS

The Bill is designed mainly to give relief to displaced debtors in respect of liabilities incurred by them prior to their displacement from West Pakistan though remission of court fees has also been allowed to displaced creditors. A certain amount of relief was afforded to them by Acts XLVII of 1948 and XXV of 1949, but this was found to be inadequate.

A thorough examination of the various problems involved had to be made with a view to affording displaced persons adequate and, at the same time, reasonable relief in the matter of their indebtedness, consistently with the needs of their rehabilitation. The task of such examination was entrusted to the Hon'ble Shri Bind Basni Prasad, a Judge of the Allahabad High Court, and the present Bill is the outcome of his recommendations. In brief, the object of the Bill is to relate the payment of all pre-migration pecuniary liabilities of a displaced person to—

(a) his 'paying capacity'—an expression which has been defined after making liberal allowances in favour of the debtor; and

(b) the compensation which might be received by him in respect of his immovable property left behind in West Pakistan.

A decree under the law will thus consist of two parts, the first part being equivalent to and recoverable from the 'paying capacity' of the debtor, and the second part being equivalent to the balance of the total amount decreed and recoverable from the compensation, if and when received by the debtor. The first part of the decree will, as a rule, be recoverable in instalments.

In respect of the second part of the decree, it has been accepted that the amount payable should be scaled down in the proportion in which the displaced debtor is able to obtain recompense in respect of his immovable property left behind in West Pakistan. Where no recompense is received, there will be no recovery of the second part of the decree.

Displaced debtors will have the right to apply, within a period of one year from the enactment of this Bill, for the reduction of debts due to creditors, in accordance with the provisions of this Bill. All pre-migration liabilities will be consolidated for the purpose, but it has been specially provided that no stigma of insolvency will attach to any one seeking relief under this law.

Certain additional reliefs, for example, remission of interest after August 15, 1947, exemption from arrest or attachment of properties, reduction of certain pre-migration liabilities like maintenance allowance, apportionment of liabilities in the case of joint debts, revision of decrees already passed with a view to bringing them into line with present legislation, etc. have also been provided; and in formulating these reliefs the needs of rehabilitation and the fact that displaced persons have been unable to derive benefit from properties left behind in West Pakistan have been given due weight. Although under the Act civil courts will be vested with jurisdiction, the Bill provides a simplified procedure for the determination of debts, and minimises the delay involved in a series of appeals and revisions. Debts of different categories—debts secured on immovable property, debts secured by pledge of movable property and simple debts—are dealt with differently. The respective circumstances governing such transactions have been taken into consideration, an attempt being made to temper contractual obligations with equity when both creditors and debtors have lost control over the properties offered as security.

Special provisions have also been made to enable displaced persons to be absolved, for a period of ten years, from further liability in respect of calls on shares in companies, an opportunity being given to them to have their partly paid up shares converted into a proportionate number of fully paid up ones. Conditions of contracts with insurance companies, which were more or less of a technical nature and which became incapable of fulfilment on account of circumstances beyond the control of the insured, are declared to have no effect and the insured is given an opportunity of getting compensation for the losses which he has suffered. A special provision has also been made to enable displaced banks to have their existing schemes of arrangement sanctioned by High Courts under section 153 of the Indian Companies Act, 1913, modified, when, due to reliefs granted to their debtors under this Bill, they find it difficult to carry out their obligations under the schemes. Recognition of Societies and Companies registered in Pakistan has been provided for in case the majority of their members or shareholders have migrated to India.

AJIT PRASAD JAIN.

NEW DELHI;

The 9th August, 1951.

M. N KAUL,
Secretary.